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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 10. CALIFORNIA HEALTH
BENEFIT EXCHANGE**

**NOTICE OF INTENTION TO ADOPT A
CONFLICT-OF-INTEREST CODE**

OVERVIEW

A key piece of federal health care reform, the California Health Benefit Exchange (Exchange) will operate California's marketplace for purchasing insurance in the individual and small business markets. The Federal Patient Protection and Affordable Care Act (Pub. L. 111-148), Subtitle D, as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), requires states to establish and operate health benefit exchanges for the purchase of qualified health plans, or else the Federal Department of Health and Human Services will operate an exchange in the state. In response, the California Legislature passed Assembly Bill 1602 (Chapter 655, Statutes of 2010) and Senate Bill 900 (Chapter 659, Statutes of 2010), which created California's Exchange.

Government Code Section 87300 requires every state agency to adopt and promulgate a conflict-of-interest code. This code must be submitted for approval to the Fair Political Practices Commission in accordance with Government Code Section 87303 no later than six months after the entity comes into existence.

The Board held its first meeting on April 20, 2011. It was fully constituted on June 22, 2011. Although the Exchange does not yet have any permanent staff, it has engaged several consultants and has hired permanent staff members who have yet to begin working. It is necessary to have a conflict-of-interest code in place before permanent staff members begin work.

AUTHORITY AND REFERENCE CITATIONS

Authority: Sections 87300 and 100504, Government Code.

Reference: Sections 81004, 81008, 87202, 87203, 87204, 87206, 87207, 87208, 87209, 87210, 87300,

87301, 87302, 87302.6, 87303, 87306, 100500, and 100504, Government Code.

**INFORMATIVE DIGEST AND POLICY
STATEMENT OVERVIEW**

Policy Statement: The objective of the proposed regulation is to establish a conflict-of-interest code for the Exchange.

Existing Law: Current statutes provide that no Exchange staff or board member may be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic, or a trade association of any of those individuals or entities, while serving on the Exchange board or staff. (See Government Code 100500). Additionally, an Exchange staff or board member may not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice. *Id.* An existing statute also requires the Exchange to adopt and promulgate a conflict-of-interest code containing provisions including:

- Enumeration of the positions within the agency which involve the making or participation in making of decisions which may foreseeably have a material effect on any financial interest, and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable;
- Requirement that each designated employee file a disclosure of economic interests upon assuming office, annually thereafter, and upon leaving office; and
- Specific provisions setting forth any circumstances under which designated employees must disqualify themselves from making, participating in making, or using their official position to influence the making of any decision.

(Government Code Section 87302).

A current regulation adopted by the Fair Political Practices Commission contains the terms of a standard conflict-of-interest code that can be incorporated by reference in an agency's code. (Cal. Code Regs., tit. 2, Section 18730).

A summary of the proposed regulations' effect on existing law and regulations follows:

Title 10, Section 6400 (new section)

Conflict-of-Interest Code

The Conflict-of-Interest Code restates the requirement under the Political Reform Act that all state agen-

cies adopt and promulgate a conflict-of-interest code. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2, Section 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference into an agency's code. The Conflict-of-Interest Code incorporates that regulation by reference. Also, it specifies that the regulation and the attached Appendices designating positions and establishing disclosure categories constitute the Exchange's conflict-of-interest code.

The main document also specifies that individuals holding designated positions shall file their statements of economic interest with the Exchange, which will make the statements available for public inspection and reproduction, as required under Government Code Section 81008. Further, after receiving the statements for Board members and the Executive Director, the Exchange will make and retain copies and forward the originals to the Fair Political Practices Commission. The Exchange will retain all other statements.

Appendix A List of Designated Positions

The List of Designated Positions includes all positions with the Exchange that must file a disclosure of economic interests and assigns their disclosure category.

Positions in Disclosure Category 1 include Board Members, the Executive Director, the Chief Deputy Director, Deputy Directors, the Chief Financial Officer, the Chief Operations Officer, the SHOP Exchange Director, the Health Plan Contracting Director, the Chief Information Technology and Information Officer, the Chief Medical Officer, the General Counsel, the Communications and Marketing Director, the Legislation Director, and Staff Counsel.

Positions in Disclosure Category 2 include Procurement Personnel.

Consultants and individuals serving in new positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category. However, the List of Designated Positions clarifies that the Executive Director may determine in writing that a particular consultant, although a designated position, is hired to perform limited duties and is not required to comply with the disclosure requirements described in the Code. The written determination must include a description of the consultant's duties and a statement of the extent of required disclosure. This determination is a public record and must be retained for public inspection.

Appendix B Disclosure Categories

The Disclosure Categories provide the extent of required disclosure for designated positions in each of the categories.

Designated positions in Disclosure Category 1 must disclose all investments and positions in business entities, and income, including gifts, loans, and travel payments, from the following:

- Health insurance carriers.
- Health insurance agents or brokers.
- Health care providers.
- Health care facilities or health clinics.
- Pharmaceutical companies.
- Medical device or equipment manufacturers or distributors.
- Trade associations of health insurance carriers, health insurance agents or brokers, health care providers, health care facilities or health clinics, pharmaceutical companies, and medical device or equipment manufacturers or distributors.
- Organizations representing individuals with specific medical conditions.
- Information technology consulting firms.
- Sources of the type to provide goods, equipment, materials, supplies, and information technology or telecommunication products to the Exchange.
- Sources of the type to provide personal services to the Exchange, including, but not limited to, health care and insurance research consulting firms.
- Sources of the type to receive funding from or through the Exchange.

Designated positions in Disclosure Category 2 must disclose all investments and business positions in business entities, and sources of income, which provide goods, materials, supplies, and information technology or telecommunication products of the type used by the Exchange.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY or REPORT

None.

INQUIRIES AND COMMENT PERIOD

Copies of the proposed code are available to interested persons. Copies may be obtained at the Exchange's website:

<http://www.healthexchange.ca.gov/Documents/Conflict%20OF%20INTEREST%20CODE.pdf> or by contacting info@hbex.ca.gov.

Written comments concerning the proposed code may be submitted to Gabriel.ravel@hbex.ca.gov. Written comments must be received by December 14, 2011 in order for them to be considered by the Exchange before it adopts the code. Any interested person or his or her representative may request a public hearing no later than November 29, 2011.

Inquiries concerning the proposed code may be directed to Gabriel Ravel at Gabriel.ravel@hbex.ca.gov

or (916) 263-4263. The Exchange has prepared a written explanation of the reasons for the designations and disclosure responsibilities, and has available all of the information upon which its proposal is based.

The Exchange must determine that no alternative considered by the Exchange would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DETERMINATIONS

The Proposed Substantial Differentiation from Existing Comparable Federal Regulation or Statute: None.

Mandates on Local Agencies or School Districts: None.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Costs to Any Local Agency or School District that Require Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: There are no costs to any local agency or school district that would require reimbursement.

Non-discretionary Costs or Savings Imposed on Local Agencies: None.

Costs or Savings to Any State Agency: None.

Costs or Savings in Federal Funding to the State: None.

Costs or Savings to Individuals or Businesses: None.

TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 South Spring Street,
South Tower, 12th Floor
Los Angeles, California 90013

NOTICE OF PROPOSED ACTION

GENDER NONDISCRIMINATION IN HEALTH INSURANCE

DATE: **October 14, 2011** **REGULATION FILE:**
REG-2011-00023

SUBJECT OF PROPOSED RULEMAKING

The California Department of Insurance ("CDI") proposes to adopt the following regulations, after considering comments from the public: Title 10, Chapter 5,

Subchapter 3, Article 15.1: Gender Nondiscrimination in Health Insurance. The CDI is proposing to adopt California Code of Regulations sections 2561.1 and 2561.2 to implement AB 1586 (2005), which revised the definition of "sex" in California Insurance Code section 10140 to be the same as the definition of "gender" in the California Penal Code section 422.56, which includes a person's gender identity and gender-related behavior. The proposed regulations also implement Insurance Code section 10140.2.

The proposed regulations are intended to prevent discrimination in health insurance coverage and health insurance claims approval based upon an individual's actual or perceived gender identity.

PUBLIC HEARING: DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows

Date and Time: **November 29, 2011**
10:00 a.m.

Location: **Department of Insurance**
45 Fremont Street, 22nd Floor
Hearing Room
San Francisco, CA 94105

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on November 29, 2011**. Please direct all written comments to the following contact person:

Edward Wu
Staff Counsel
California Department of Insurance
300 South Spring Street, South Tower, 12th Floor
Los Angeles, CA 90013

(213) 346-6635
(213) 897-8261 (facsimile)
edward.wu@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed regulations should be addressed to the contact person listed above. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

George Teekell
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4381

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on November 29, 2011**. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: edward.wu@insurance.ca.gov. The Commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (213) 897-8261**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. **Comments sent by email or facsimile are subject to the 5:00 p.m., November 29, 2011 deadline.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 10140 and 10140.2, with reference also to Penal Code section 422.56. Insurance Code sections 10140 and 10140.2 provide authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi*, 8 Cal.4th 216 (1994).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Insurance Code section 10140 as amended by A.B. 1586 (2005) prohibits discrimination by admitted insurers in California based upon the sex of the insured or prospective insured. The term "sex" is defined as having the same meaning as "gender" as defined in Penal Code section 422.56, which includes an individual's actual or perceived gender identity. In addition, Insurance Code section 10140.2, added by A.B. 119 (2009), provides that health insurance policies issued, amended or renewed on or after January 1, 2011 shall not require

premiums based on the sex of the insured or potential insured. Just as in Insurance Code 10140, the definition of the term "sex" in Insurance Code section 10140.2 includes an individual's actual or perceived gender identity. The Department has received information that there are many individuals in California that have either been denied health insurance coverage or had claims for health care services denied because of their actual or perceived gender identity.

The California Department of Insurance intends to implement the proposed regulations to specifically prohibit and prevent, among other things, the denial of coverage or denial of claims for medical services based upon an insured or prospective insured's actual or perceived gender identity. Any and all forms of discrimination based on gender identity, including but not limited to discrimination against transgender persons, in health insurance fall within the scope of this notice.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code. There are no nondiscretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers. The proposed regulations do not impose specific reporting or recordkeeping requirements; however, any insurers who currently discriminate on the basis of gender identity will be required to cease

such discrimination in order to comply. Certain insurers may thus be required to pay some claims currently being denied, to provide coverage currently denied, or to charge different premiums than are currently charged to some insureds. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California.

The proposed regulation may require insurers to pay some claims currently being denied, to provide coverage currently denied, or charge different premiums than are currently charged to some insureds. These impacts are not anticipated to result in the creation or elimination of jobs, nor cause the creation or elimination of businesses. The proposed regulation may assist some health care providers receive more timely payment for services, aiding current businesses.

The Commissioner also invites interested parties to comment on these issues.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the proposed regulations apply to businesses.

IMPACT ON SMALL BUSINESS

The Commissioner has determined the proposed action will not affect small business since the regulations apply only to insurers doing business in California and, pursuant to subdivision (b)(2) of Government Code section 11342.610, an insurer is by definition not a small business.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has been otherwise identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations.

The Commissioner invites public comment on alternatives to the regulations.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an Initial Statement of Reasons ("ISOR") that sets forth the reasons for the proposed regulations. Upon request, the ISOR and the text of the proposed regulations will be made available for inspection and copying. Requests for the ISOR and the text of the proposed regulations, or questions regarding this proceeding, should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the ISOR, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 21st Floor, San Francisco, California between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Final Statement of Reasons

After it has been prepared, and upon request, the Final Statement of Reasons ("FSOR") will be made available for inspection and copying. Requests for the FSOR should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to all persons who have previously filed a request to receive notice of proposed rulemaking with the Commissioner.

WEBSITE POSTINGS

Documents concerning these proposed regulations are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to 'Gender Nondiscrimination in Health Insurance' and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2011-00023" (the CDI's regulation file number for these regulations) in the search field. Alternatively, search by keyword ("gender non-discrimination," for example). Then, click on the 'Submit' button to display links to the various filing documents.

MODIFIED LANGUAGE

If the Commissioner adopts regulations which differ from those which have originally been made available but are sufficiently related to the original proposed regulations, the amended regulations will be made available to the public for at least 15 days prior to the date of adoption of the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.

TITLE 10. DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

Date: **October 14, 2011** **Regulation File:** **REG-2011-00020**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt amendments to California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(b), 2202(c), 2202(d) and 2202(e) after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Commissioner proposes to amend these sections under the authority granted by California Insurance Code ("CIC") sections 742.43, 779.21, 10168.92, 10192.3, 10234, 10327, 10506, 10506.3, 10704, and 12973.9.

The Commissioner proposes to amend sections 2202(b), 2202(c), and 2202(d) to adjust the fees he charges insurance providers for processing, indexing and maintaining copies of documents defined in CCR section 2201(a) and 2202(a). In addition, the Commissioner proposed to amend section 2202(e) to allow the Commissioner the flexibility to adjust a fee, when circumstances warrant, in a manner that is not necessarily uniform with fee adjustments in other filing circumstances.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed amendments to the regulations, as follows:

Date and time: **December 1, 2011, 10:00 a.m.**
Location: **Department of Insurance
Administrative Hearing Bureau
Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted, or until 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed amendments to the regulations during the public comment period. The public comment period will end at **5:00 p.m. on December 1, 2011**. Please direct all written comments to the following contact person:

Jennifer Chambers, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4145

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Nancy Horn, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on December 1, 2011**. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: chambersj@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Jennifer Chambers and sent to the following facsimile number: (415) 904-5896. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons

with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(b), 2202(c), 2202(d) and 2202(e) pursuant to the rulemaking authority vested in him by Insurance Code sections 742.43, 779.21, 10168.92, 10192.3, 10234, 10327, 10506, 10506.3, 10704 and 12973.9.

The Commissioner's proposed amendments to CCR section 2202 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10163.35, 10168.93, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658, 12250, and 12973.9.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Under existing law, when the Insurance Code requires that a document (defined by CCR sections 2201(a) and 2202) be filed with, submitted to, or approved by the Commissioner, "fees as provided for by [CIC section 12973.9] shall be paid to the commissioner to cover the expenses of processing and indexing the same and maintaining copies of the same." Insurance Code section 12973.9. The fees which the Commissioner may charge for actions on documents submitted to him are set forth in CCR sections 2202 and 2203.

On March 29, 2010, the Office of Administrative Law ("OAL") approved the Commissioner's regulations designed to rectify a shortfall between the fees collected (revenue) and the Commissioner's direct and indirect costs associated with processing, indexing and maintaining copies of the filings. (See Regulation File: REG-2009-00023). These regulations were required due to an imbalance in expenses associated with processing document filings made pursuant to CCR sections 2202 and 2203 and the Commissioner's revenue derived from filing fees. In measuring the revenue obtained by the Department following the fee increases, however, it became clear that the Commissioner was not fully rectifying the shortfall between costs and reve-

nue and a closer look at the methodology used to calculate the fee increases was required. For example, for Fiscal Year (FY) 2010–11, there is currently a \$3.7 million shortfall in the revenue collected by the Commissioner for review of filings pursuant to CCR sections 2202 and 2203. Other revenue sources of the Department of Insurance, primarily general fees and license revenue, will be required to cover this shortfall. This is on top of the revenue shortfall of \$4.4 million for FY 2009–10 despite the implementation of the new fee schedule in the second half of the fiscal year.

The proposed amendments to sections 2202(b), (c) and (d) follow a thorough review of the Commissioner’s methodology and are designed to address the structural misalignment between revenue and expenses with respect to the processing of documents.

This rulemaking also makes proposed changes to section 2202(e). Specifically, as currently worded, this provision generally requires a uniform percentage for any increase or decrease in the fees for filings under CCR sections 2202 and 2203. However, it also contains a confusing series of purported exceptions to this rule. Moreover, while it makes sense as a general proposition for the Commissioner to raise or lower rates on a uniform basis, the fundamental goal of exacting fees is to capture to the extent possible the processing costs associated with each filing classification. Thus, it makes much more sense for the Commissioner to have the flexibility to adjust a fee, albeit in a manner not always uniform with other fee changes, to allow for any variation in the expenses associated with that specific filing classification.

EFFECT OF PROPOSED ACTION

The proposed amendments amend the fees set forth in CCR sections 2202(b), 2202(c), and 2202(d) in order to cover the cost of processing insurer filings. The data and methodology have since been thoroughly reviewed and corrected and the fees in the proposed regulation are expected to come into full alignment with the Commissioner’s expenses. The proposed fee increase requires a uniform percentage increase for all fees in CCR sections 2202(a), (b) and (c), except for the class of forms referenced in sections 2202(a)(12) and 2202(a)(13). The latter forms include the categories of “Life Insurance Policies and Annuity Contracts Subject to Nonforfeiture Laws” and “Grants and Annuities.” After thorough analysis, the Commissioner determined that some types of filings in these classes actually merited a decrease.

The proposed amendments correct fee levels so that fees charged more accurately reflect the actual costs incurred in processing, indexing, and maintaining docu-

ments as required by law. The fee changes do not exceed the amounts calculated by the Department of Insurance’s Budget Office as necessary to cover all direct and indirect costs of the unit(s) for the next succeeding fiscal year or years thereafter. There are no other moneys received or projected to be received for the unit(s) processing the documents subject to such fees. The effect of the amendments will be to stop the unsustainable cash flow imbalance currently taking place.

The proposed amendment to CCR section 2202(e) will clarify existing 2202(e) which is at present very awkwardly worded, and will also allow the Commissioner the flexibility to modify fees at a rate other than a uniform rate with respect to CCR sections 2202 and 2203, to allow for any variation in the expenses associated with a specific type of filing.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers.

The Commissioner has considered performance standards, but the Commissioner has identified no performance standards which would be as effective as the proposed amendments to address the issue of cost recovery.

The Commissioner has not considered other proposed alternatives which would lessen any adverse eco-

conomic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner has made an initial determination that the adoption of the proposed amendments will result in overall costs to insurers who make document filings under CCR sections 2201 and 2202 of approximately 3.7 million dollars (\$3,700,000) per year. The cost for each of the approximately 1,300 insurers who make such filings is estimated to be, in the aggregate, approximately two thousand eight hundred dollars (\$2,800) per year on average. The Commissioner is not aware of any cost impacts that a representative private person or business, other than the insurers described above, would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above, but he invites interested parties to comment on this issue.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

IMPACT ON SMALL BUSINESS

The Commissioner has made an initial determination that the adoption of the proposed amendments will not affect small businesses because insurers are not small businesses under Government Code section 11342.610(b)(2). However, the Department invites public comments on the question of economic impact on small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes that are comparable to the proposed amended regulations.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person in this Notice.

The file for this proceeding, which includes a copy of the express terms of the proposed amended regulations, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of the proposed amended regulations and this Notice, including the Informative Digest, which con-

tains the general substance of the proposed amendments to the regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the "Policy Form Processing Cost Recovery" link, and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter the Department's regulation file number for the regulations in the search field. Alternatively, search by keyword ("cost recovery" for example). Then, click on the 'Submit' button to display links to the rulemaking documents online.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed in this Notice.

TITLE 14. DEPARTMENT OF FISH AND GAME

NOTICE OF PROPOSED RULEMAKING

The Department of Fish and Game (Department) proposed to adopt the proposed regulations described be-

low after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing starting at 10:00 a.m. on November 28, 2011, in the conference room at 1812 9th Street, Sacramento, California 95811. The conference room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department at this office no later than 5:00 p.m. on November 28, 2011. All written comments must include the true name and mailing address of the commenter.

Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Wildlife Branch
Victoria Barr, SHARE Program Coordinator
1812 9th Street
Sacramento, CA 95811
Fax: (916) 445-4048
Email: vbarr@dfg.ca.gov

AUTHORITY AND REFERENCE

Fish and Game Code Section 1572(b) authorizes the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 1570, 1573, and 1574 of the Fish and Game Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The regulations proposed in this rulemaking action clarify and make specific the landowner enrollment process, the public application and permit issuance process, and the general operating conditions for the Shared Habitat Alliance for Recreational Enhancement (SHARE) program.

Fish and Game Code Sections 1570-1574 also authorizes DFG to: 1) enter into contracts with private land-

owners, nonprofit organizations, governmental entities, or any other entities to provide payment for providing wildlife-dependant recreational activities on their property; 2) establish and impose user fees in an effort to fund the program appropriately; and 3) promulgate regulations to implement the program.

Specifically:

- 1) Section 602(a) defines what constitutes a SHARE program property;
- 2) Section 602(b) describes the landowner enrollment process;
- 3) Section 602(c) describes permitted uses allowed on a SHARE property;
- 4) Section 602(d) places responsibility on the permit holders to follow all state law and regulations governing the permitted activity;
- 5) Section 602(e and f) describes the public application and permit issuance process;
- 6) Section 602(g) describes access for law enforcement purposes;
- 8) Section 602(h) describes agreement cancellation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California

Significant effect on housing costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivisions (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Victoria Barr
Address: 1812 Ninth Street
Sacramento, CA 95811
Telephone No.: 916-445-4034
Fax No.: 916-445-4048
E-Mail Address: vbarr@dfg.ca.gov

The backup contact person is:

Name: Craig Stowers
Address: 1812 Ninth Street
Sacramento, CA 95811
Telephone No.: 916-445-3553
Fax No.: 916-445-4048
E-Mail Address: cstowers@dfg.ca.gov

Website Access: Materials regarding this proposal can be found at:
www.dfg.ca.gov/news/pubnotice.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Barr at the above address.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the ru-

lemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Ms. Barr.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Victoria Barr at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Barr at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.dfg.ca.gov/news/pubnotice.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 355, 710, 710.5, 710.7, 713, 1002, 1050, 1053, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1583, 1585, 1761, 1764, 1765, 1907, 2118, 2120, 2122, 2150, 2150.2, 2157, 2190, and 10504 of the Fish and Game Code and to implement, interpret or make specific sections 355, 711, 713, 1050, 1053, 1055.3, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1582, 1583, 1584, 1585, 1590, 1591,

1764, 1765, 2006, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 10504, 12000, and 12002 of the Fish and Game Code, and Section 14998, Government Code, proposes to amend sections 550, 551, 552, 630 and 703, add Section 550.5 and repeal Section 553, Title 14, California Code of Regulations, relating to Public Use of Department of Fish and Game Lands.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The majority of acreage administered by the Department of Fish and Game is included in either wildlife areas or ecological reserves. Wildlife areas are acquired primarily for wildlife conservation and providing opportunities for compatible recreational uses (Fish and Game Code 1525–1530). There are currently 110 wildlife areas that encompass approximately 707,071 acres. Ecological reserves are acquired primarily for the purpose of protecting rare and/or endangered native plant and animal species and specialized habitat types (Fish and Game Code 1580). Other purposes for the establishment of ecological reserves are the observation of native plants and animals by the general public and scientific research (Fish and Game Code 1584). The ecological reserves currently include 130 properties, encompassing approximately 204,585 acres. The Department also administers public access lands and properties which are not yet designated. These are typically properties that have been recently acquired but have not yet been designated as either wildlife areas or ecological reserves by the Fish and Game Commission.

The regulations that govern public uses of lands administered by the Department are in Sections 550, 551, 552, 553, and 630 of Title 14 of the California Code of Regulations (CCR). Currently, Sections 550, 551, and 553 pertain to wildlife areas that are owned or managed by the Department. Section 552 pertains to National Wildlife Refuges where the Department manages hunting programs, and Section 630 pertains to the Department's ecological reserves.

If approved, these proposed regulation changes would:

- 1) Consolidate and improve the consistency and clarity of the regulations that govern public use of lands owned and/or managed by the Department of Fish and Game, and remove existing regulations that are duplicative or unnecessary. The sections of Title 14, CCR that would be "cleaned-up" include 550, 551, 552, 553, and 630. Section 553, Heenan Lake Wildlife Area, is being moved to Section 551.
- 2) Standardize the process used to issue special use permits for activities or group events on

Department lands that are outside of compatible activities defined in the proposed general regulations in Section 550(b)(2), Title 14. Fees associated with Special Use Permits are proposed in Section 703.

3) Designate seven properties that have been acquired relatively recently by the Department as wildlife areas or ecological reserves (Sections 551(b) and 630(b) respectively of Title 14).

4) Change site-specific regulations for the Magnesia Springs Ecological Reserve, Riverside County (currently Section 630(b)(73), Title 14) to correct the names of trails that have been rerouted per the Coachella Valley Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan.

5) Change site-specific regulations for the Palo Verde Ecological Reserve, Riverside County (currently Section 630(b)(87), Title 14) with respect to method-of-take and species that are hunted on the property. These changes are proposed to promote visitor safety.

Background information is provided below to explain the need for the proposed regulation changes. The consolidation and clarification of the regulations and standardizing the procedures for addressing requests for special events or uses on Department lands will not result in any new uses of the Department's land and will not remove existing uses. Because these proposed changes are meant to clarify existing regulations (and designate recently acquired lands) rather than change on-the-ground uses, the proposed regulation changes will not have an adverse effect on the environment and are not subject to a separate review process under the California Environmental Quality Act (CEQA). This is consistent with the substitution of regulatory documents of certified programs for Environmental Impact Reports or Negative Declarations provided for in Section 15252 of the California Code of Regulations.

Consolidate and Clarify Land Regulations

These sections include many subsections that are unnecessary because they duplicate other regulations or information in statutes, or because they address management issues that are more appropriate to address in individual land management plans (e.g. vegetation management by Department staff). The manner in which the regulations are organized makes it difficult for the public to find information on specific uses and know what is allowed or prohibited on Department lands. Inconsistencies throughout the regulations make it difficult for staff to interpret what is allowable resulting in potential enforcement issues. The quantity, lack of clarity and inconsistencies in the existing regulations

make it difficult to assess whether new proposed regulations are consistent and non-duplicative.

Examples of Current Regulation Shortcomings:

Inconsistent:

1) Recently acquired lands not yet designated as wildlife areas or ecological reserves are referred to as "undesignated lands." They are not regulated by Sections 550, 551, and 552, Title 14 which cover designated wildlife areas and the federal refuges with hunt programs managed by the Department. Undesignated lands are also not covered by Section 630, Title 14 which regulates the use of ecological reserves. Even though the lands have been acquired for conservation purposes, undesignated lands do not currently receive the same level of legal protection as designated properties. General regulations need to cover undesignated Department lands as well as the lands that are designated.

2) Section 630(a)(7) requires that visitors stay on designated trails in parts of ecological reserves that are designated as being especially environmentally sensitive. There are no comparable regulations for wildlife areas although they may include areas where it is important for visitors to stay on designated trails.

3) In Section 630(b), there are over twenty nearly identical regulations for research permits on individual ecological reserves. Research permits are not mentioned in the sections that govern wildlife areas (Sections 550 and 551) or the general regulations for ecological reserves (Section 630(a)). In practice, the Department oversees research conducted on all of its properties, however this should be clearly stated in the regulations. Existing regulations regarding research on Department lands contain problems of both duplication and inconsistency.

4) Section 550(b)(5) requires obtaining written authorization from the Regional Manager to hold an organized event on a wildlife area. There is no general or site-specific regulation in Section 630 that requires obtaining written authorization or a permit to conduct a special use or hold an event on an ecological reserve. In practice, the Department requires written permission for special uses or events on ecological reserves, but this should be clarified in the regulations.

5) Several regulations prohibit the application of pesticides on Department lands with varying exceptions made for applications conducted by public agency employees. Section 550(b)(15) specifies that pesticides can only be used in accordance with a Department-approved program. Section

630(a)(13) requires that pesticide use be authorized by either the Department or the Commission for management or public safety, and Sections 630(b)(24) and (25) require authorization from the Commission for pesticide applications on two ecological reserves. Although the common intent is to prohibit members of the general public from applying pesticides on Department lands, the existing regulations are inconsistent with regard to the Department's use of pesticides. It should be noted that pesticide use is analyzed in the land management plans for each property, which undergo public review through the CEQA process and that pesticide use by the Department is conducted in compliance with local, state and federal laws.

Confusing:

6) Multiple subsections of Sections 550, 551 and 630, Title 14 address the inter-related topics of research, educational activities and collecting. Differences in wording among these sections can be confusing to the public and Department staff. For example:

- Section 550 does not contain a regulation that addresses collecting animals outside of hunting or fishing (e.g. for educational or scientific purposes).
- Section 550(b)(10)(A) states that plants can only be collected under the direction of the area manager or to build hunting blinds.
- Section 630 has one subsection (a)(3) that explains that collecting anything on an ecological reserve requires a scientific collecting permit obtained per Section 650, Title 14.
- Section 630(b) includes multiple site specific regulations that allow collecting for research or educational purposes under written authorization, but those subsections do not provide any specific directions. Examples of these subsections include 630(b)(29) and 630(b)(30).

7) Bicycles are currently allowed on "designated access" roads on ecological reserves (Sec 630(a)(4), Title 14). Currently nine out of the 130 ecological reserves have site specific regulations that allow bicycles on "designated trails" and five of those specifically describe the trails in the regulation. The vast majority of ecological reserves do not have maps, signs or regulations that designate particular roads or trails as access roads or bicycle trails. A similar state of confusion exists for bicycles on wildlife areas. Based on guidance about

the purpose of the Department's lands in Sections 1525 et. seq. and 1580 et. seq., Fish and Game Code and the acquisition documents and management plans written for these properties, one can reasonably conclude that bicycle riding does not align with the purposes for which lands are acquired by the Department, though it may not be incompatible on some areas under certain conditions. Under the proposed general regulations that apply to all Department lands (proposed Section 550(bb), Title 14) bicycles are only allowed on properties that currently have site specific regulations allowing them (proposed Sections 551(l), (552), and 630(g)). Going forward, the use of bicycles will need to be evaluated under CEQA prior to adding them or removing them as a public use on specific Wildlife Areas and Ecological Reserves.

Unnecessary:

8) Duplication among regulations:

- a. There are general regulations for fires on both ecological reserves (Section 630(a)(19)) and wildlife areas (Section 550(b)(13)). There are 15 site specific regulations about fires in Sections 551(q) and 630(b). All of these regulations share the same intent of preventing wildfires on Department lands.
- b. The general regulations in Sections 630(a) and 550(b) have many nearly identical regulations regarding destructive activities such as littering, dumping trash, destruction of habitat, archeological artifacts, vandalism, etc. It would be more clear and efficient to have a single set of regulations that apply to all Department lands that prohibit these activities.

9) Site Specific Regulations for Generally Incompatible Uses

- b. Some site-specific regulations that prohibit specific activities are unnecessary because the activity is incompatible with the purpose of an ecological reserve. Incompatible uses are prohibited in general regulations and legislative statute. An example is current Section 630(b)(9)(l), Title 14 which prohibits the use of motorized model rockets and aircraft on the Ballona Wetlands Ecological Reserve. The preamble of Section 630 states that "public entry and use of ecological reserves shall be compatible with the primary purposes of such reserves." Also, Regional Manager's have the authority to prohibit incompatible uses (current Section 630(a)(22)). A specific regulation

should not be necessary to prohibit the use of motorized model rockets and aircraft on the ecological reserve because it is incompatible with the primary purpose of the reserve.

10) Explicitly covered in statute and land management plans

Regulations that address an activity that is already very explicitly addressed in statute are not necessary. An example is a regulation authorizing the Department to construct facilities on the Rancho Jamul Ecological Reserve (Section 630(b)(99)(C), Title 14). Section 1584 of the Fish and Game Code clearly authorizes the Department to construct such facilities, where appropriate on ecological reserves. Beyond the statute, the construction of such facilities is addressed in each property's land management plan, and associated environmental documents, which undergo public review in accordance with CEQA.

11) Activities better addressed on a site specific basis in land management plans:

a. Some existing regulations address management activities conducted by the Department that must also be analyzed in land management plans and associated environmental documents prepared for each property. Some of these management activities are also regulated by other agencies. An example of this is language in the existing regulations that addresses the use of pesticides by the department (Sections 550(b)(15), 630(a)(13), 630(b)(24), and 630(b)(25)). Pesticide use is analyzed in the land management plans for each property, which undergo public review through the CEQA process and pesticide use by the Department is conducted in compliance with local, state and federal laws.

Approach to Consolidate and Clarify the Regulations:

The regulatory language in this proposal consolidates the general regulations for wildlife areas and ecological reserves (currently Sections 550(b), 551(b) through 551(p), and 630(a), Title 14). The intent is to provide a single set of general regulations in Section 550, Title 14 that apply to all properties owned or managed by the Department of Fish and Game.

In addition to eliminating duplication among the general regulations, site specific regulations in the current Sections 551(q), 552, 553, and 630(b) that are duplicated for many individual properties are consolidated into the proposed general regulations in Section 550. For example, instead of the 24 site-specific regulations currently addressing research permits in Section 630(b), there will be one regulation that addresses re-

search permits for all Department lands in Section 550(f).

Regulations pertaining only to wildlife areas will remain in Section 551, and regulations pertaining only to ecological reserves will remain in Section 630. Site specific regulations will be retained if they address a unique need for a particular property. New tables are included to assist users with finding regulations on specific uses or properties.

The consolidation described above reduces the overall length of the regulations, but that reduction is somewhat offset by providing more definitions and specific direction on issues such as research permits and special use permits. Overall, these changes should facilitate responsible use and management of the Department's lands. It is anticipated that the public and staff will find the proposed regulations easier to use and understand. It is important to note that this proposed "clean-up" of the regulations does not remove any existing public uses or add any new uses. Because no changes in existing environmental conditions are proposed with these changes, they do not require separate review under CEQA.

Standardize Processing and Recover Costs for Special Use Permits

Individuals and organizations may desire to conduct events on Department lands which are outside of the routine uses of the property or involve large groups of people or domestic animals. Examples of these types of uses or events include field dog trials, organized horseback trail rides, mountain bike access, running events (e.g. 10K runs), weddings and commercial filming. These special uses may conflict with routine uses and the conservation purposes of Department lands. However, in many cases, under specified conditions, these activities could be conducted in a manner that is consistent with the overall management of the properties. It should be noted that review of these requests, and the development and implementation of these conditions may require additional work by Department staff whose time is often fully committed under their existing workload. Lack of sufficient Department staff can be a limiting factor for authorizing these activities.

There currently are no statewide procedures for making or processing these requests. Fish and Game Code Sections 1528 and 1580 authorize the Department to operate wildlife areas and ecological reserves, respectively, for the purposes described in those sections. Conservation of natural resources is a primary purpose of both wildlife areas and ecological reserves. Current Section 550(b)(2), Title 14 authorizes the Department to restrict entry into wildlife areas for safety and management purposes and similar language exists for ecological reserves in Section 630(a)(10). Section 550(b)(5) for wildlife areas currently requires prior

written authorization from the Regional Manager for special events, but it does not provide guidance on how this authorization should be issued. The regulation does state that the activity must be compatible with the management objectives of the property. Section 550(b)(14) states that “special permits” are required for field dog trials on wildlife areas, but it provides no information about what these permits are or how to obtain them. Special uses or events are not addressed in the current regulations for ecological reserves (Section 630), although the Department does receive and respond to requests for special uses of these properties.

In order for the Department to meet its public trust responsibilities with regard to lands management, it is necessary for the regulations in Title 14 to provide a consistent method for authorizing special uses of all Department lands.

Proposed Sections 550(d) and 550.5(d), Title 14 clarify when a special use permit is necessary and standardize how special use permits are applied for, evaluated and processed. A definition of special uses is provided in proposed Section 550(b)(7). This does not introduce a new use because, as discussed above, the Department has authorization to administer entry and uses of its lands, and existing regulations specifically direct the public to apply for permits or written authorization for group activities and other special uses on wildlife areas. In practice, individuals and groups request authorization to conduct special use activities on ecological reserves, although this is not specifically addressed in the current general regulations for ecological reserves (Section 630, Title 14). There is a lack of direction in the existing regulations for both the public and staff in how to handle these requests for all types of Department lands.

There is also no mechanism at present for the Department to recover the costs of reviewing special use requests, meeting with applicants, writing conditions and conducting on-site work required for special uses (e.g. posting and removing signs, assisting with or monitoring the special use, clean up or repairs). Section 710 of the Fish and Game Code discusses the need to develop funding sources to cover the Department’s costs. Section 1050 of the Fish and Game Code authorizes the Commission to set fees to cover reasonable costs incurred by the Department to implement and administer permitting activities. Fish and Game Code Section 1528 authorizes the Commission to set fees for any use privileges on wildlife areas and for the Department to collect fees. Section 1585 states that the Department can collect fees for selected ecological reserves.

The proposed regulations introduce an application fee and a special use permit fee to cover the Department’s costs for reviewing and processing an application to conduct special uses on Department lands. The

proposed fees would be added to Section 703, Title 14. The tasks involved are listed below (“TASKS PERFORMED BY DEPARTMENT STAFF”). The applicant would submit a filing fee (\$58.71, per Sections 699 and 704, Title 14), with a permit application to the appropriate Regional office. A Special Use Permit fee would only be paid if the applicant receives notice from the Regional office that the Department intends to approve the permit and allow the special use. The proposed application form, standard permit conditions and related attachments that would be provided to the applicant are attached to this Initial Statement of Reasons.

If the Department intends to issue a special use permit, the Department’s Regional staff will send a draft permit to the applicant that will include all terms and conditions, including any that are special or unique to that use or that site, and notification of the permit fee and any other costs or deposits that are due prior to the permit being issued. If the applicant accepts the terms and conditions of the permit, he or she signs the acceptance statement on Attachment C and returns it to the Regional office with the draft permit. Once Attachment C is signed and any fees, costs and/or deposits are paid, the Regional Manager or authorized representative will sign and issue the final approved permit. It should be noted that educational activities are listed as a compatible use in proposed Section 550(b)(2) and will not require a special use permit, though written authorization from the Regional Manager or designee will be required per proposed Section 550(e), Title 14.

If the Department denies a special use permit, the Regional Manager or designee will send notification to the applicant explaining the reason that the permit was denied. The criteria for approving a special use permit application are included in proposed Section 550.5(d)(3)(A).

Proposed regulations (Section 550.5(d)) include by reference a special use permit application form, a supplementary form for special uses that are expected to provide a profit to the applicant, and three additional attachments:

Attachment A: Explains the process for obtaining a special use permit and the Permit’s standard terms and conditions.

Attachment B: Instructs the applicant on determining which Regional office special use permit applications should be sent to, and provides the addresses for the Regional offices.

Attachment C: Applicant’s acceptance of the terms, conditions, fees and any other costs for the special use permit. This form is not signed and submitted until after the applicant receives a draft permit from the Department with all of the special use permit conditions and costs included.

The permit application and many of the standard terms and conditions were adapted from similar processes and programs elsewhere in the State.

The permit fee calculations below assume typical costs for uncomplicated reviews, setting of conditions, and projects that do not require staff time beyond the tasks listed below (“TASKS PERFORMED BY DEPARTMENT STAFF”). The proposed regulations in Section 550.5(d) allow the Department to recover additional costs that might be incurred and also to collect a refundable cleaning/damage deposit. Information fields for Department staff to fill out are provided in the permit section of the proposed special use permit application form for the purpose of explaining any additional cost or deposit to the applicant. Examples of additional costs are site preparation (e.g. posting and subsequently removing signs), monitoring the special use, cleaning up or conducting repairs afterwards as a result of the special use. On properties that require a per person day use fee, the special use permit and any additional charges are in addition to the per person day use fee. There are two types of special use permits proposed:

Special Use Type 1 — Permit Fee \$51.00

A “Type 1” special use meets all of the following criteria:

- 30 or fewer visitors on-site,
- ten or fewer (0–10) animals (such as dogs or horses) or bicycles (or other pedaled vehicle) in total,
- does not require the use of animals, bicycles, vehicles, or large equipment outside of designated parking areas, roads, trails, or areas authorized for visitor use, and

- does not require use of the site for more than one calendar day during regular operating hours for the subject property. Visitor is defined in Section 550(a)(5), Title 14.

Special Use Type 2 — Permit Fee \$386.50

“Type 2” special uses involve any of the following:

- over 30 visitors on-site,
- over ten bicycles or animals in total,
- requires the use of animals, bicycles, vehicles, or large equipment outside of designated parking areas, roads, trails, or areas authorized for visitor use, and
- use of the site for more than one calendar day.

The fee calculations are presented below:

TASKS PERFORMED BY DEPARTMENT STAFF

- Application Review
- Site visit, phone conversations, e-mails with Applicant
- Notify other Department staff (law enforcement, other land management staff)
- Evaluate any policy issues and consult with Department staff as needed
- Write any special conditions of permit
- Prepare written notification to applicant
- Review and approval of permit by management staff
- Distribution and filing of paperwork
- Fee processing

Assume lead staff person for processing special use permit applications will be a Habitat Supervisor II, Interpreter II, Associate Biologist, Environmental Scientist Range B, Environmental Scientist Range C, Senior Biologist, or Staff Environmental Scientist.

Special Use Permit Cost - Special Use Permit Fee: Type 1		
Lead Staff Person (Interpreter II, Associate Biologist, Sr, Biologist, Environmental Scientist, Staff E.S., or Habitat Supervisor II)	1 hour @ \$40/hr. ¹	\$40.00
Environmental Program Manager	½ hour @ \$53/hr	\$26.50
Regional Manager	¼ hour @ \$57/hr	\$12.00
Office Technician	½ hour @ 23/hr	\$11.50
Subtotal		90.00
Overhead	20% ²	18.00
Application Fee Surcharge ³	3% of \$57.00	\$1.71
Total Cost		\$109.71
Application Fee + Surcharge ³	\$57.00 + \$1.71	(\$58.71)
Permit Fee		\$51.00

Special Use Permit Cost - Special Use Permit Fee: Type 2		
Interpreter II, Associate Biologist, Senior Biologist, Environmental Scientist, Staff E.S., or Habitat Supervisor II,	6 hours @ \$40.00/hr. ¹	\$240.00
Environmental Program Manager	1 hour @ \$53/hr	\$53.00
Regional Manager	½ hour @ \$57/hr	\$28.50
Office Technician	1 hour @ 23/hr	\$23.00
Vehicle expenses	50 miles @ \$0.50/mile	\$25.00
Subtotal		369.50
Overhead	20% ²	74.00
Application Fee Surcharge ³	3% of \$57.00	\$1.71
Total Cost		\$109.71
Application Fee + Surcharge ³	\$57.00 + \$1.71	(\$58.71)
Permit Fee		\$386.50

¹Hourly rate = Monthly salary ÷ 174 hours/month × 1.33% (benefits)
 \$30/hr = median salary for classifications listed for "lead staff person"
 \$40/hr = median salary for Environmental Program Manager 1
 \$43/hr = median salary for Regional Managers (Classification = CEA)
 \$17/hr = median salary for Office Technician

Salaries for civil service classifications accessed at www.spb.ca.gov on April 29, 2011

2009 salaries for current Regional Managers: www.sacbee.com on April 29, 2011

²Estimated Department overhead rate = 20%

³\$57 of the permit cost is recovered by a non-refundable application fee, based on Title 14, Section 699. This fee will be processed through the Department's Automated License Data System and a \$1.71 surcharge will be added to the application fee per Section 704, Title 14.

Designation of Properties

The Department proposes designations of the recently acquired lands described below as wildlife areas per Fish and Game Code Sections 1525 and 1526 or ecological reserves per Fish and Game Code Section 1580. Wildlife areas are currently designated by addition to Section 550(a), Title 14. The list of designated wildlife areas is proposed for inclusion in Section 551(b) under the proposed regulation changes. Ecological reserves will continue to be designated through addition to Section 630(b) under the proposed regulations. A compilation of Land Management Summaries and maps for the properties that are proposed for designation is included as an attachment to this document.

Wildlife Areas (Proposed Section 551b)

- 1) Designate the Burcham and Wheeler Flats Wildlife Area, Mono County (Type C).

The proposed Burcham and Wheeler Flats Wildlife Area (BFWFA) is approximately 1,160 acres of sagebrush scrub and meadow habitat located north of the town of Bridgeport in Mono County. The primary management objective for the proposed BFWFA is to conserve and enhance essential wildlife habitat for greater sage grouse (*Centrocercus urophasianus*), pygmy rabbit (*Brachylagus idahoensis*), and other sagebrush obligate species; and, to retain dispersal corridors for migratory mule deer and large carnivores. The area once supported six historical sage grouse strutting grounds, of which two are currently active. BFWFA still supports nesting and brood rearing habitat (mostly wet meadows) as well as winter habitat for this species. An estimated 3,500–4,500 deer (*Odocoileus hemionus*) from the East and West Walker deer herds migrate through the area. In addition, the area functions as a portion of the spring and fall holding area for these herds, as well as summer range fawning habitat.

The property is surrounded by U.S. Forest Service and/or private land and has been used by the general public in an uncontrolled manner (e.g., illegal grazing, destruction of signs and fencing, off-road vehicle use). Designation as a wildlife area under the proposed Section 551, Title 14 will bring the property under the protection of the general regulations in Sections 550 and 551. This will assist the Department in controlling destructive activities on-site and better protect federal and state listed species, and the habitat necessary to ensure their continued existence.

Ecological Reserves (proposed Section 630(b))

- 1) Designate the Bakersfield Cactus Ecological Reserve, Kern County

The primary management objective for the proposed 658 acre Bakersfield Cactus Ecological Reserve is the protection and long-term preservation of the Bakers-

field cactus (*Opuntia basilaris* var. *treleasei*), which is both state and federally listed as Endangered. Additional objectives include preserving San Joaquin Valley upland habitat features, protecting other special status species and wildlife corridors, and allowing appropriate public access and use. The land is currently undesignated Department-owned property located near a high density urban setting and used by the general public in an uncontrolled manner (e.g., illegal dumping, horseback riding, dogs off leash, destruction of signs and fencing, off-road vehicle use). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect federal and state listed species and their habitats.

- 2) Designate the Cambria Pines Ecological Reserve, San Luis Obispo County

The primary management objective for the proposed 106 acre Cambria Pines Ecological Reserve is the protection and long-term preservation of a native stand of Monterey pines (*Pinus radiata*) and associated botanical resources. Native Monterey pine forests occupy a small portion of their historical range and are currently restricted to five coastal locations. A secondary objective is to directly and indirectly protect the resources of Santa Rosa Creek through watershed protection and by not utilizing the existing wells on site so that water in this aquifer will be available for the creek. Protection and enhancement of Santa Rosa Creek will provide direct benefits to a number of creek and riparian dependent species including southern steelhead (*Oncorhynchus mykiss irideus*), California red-legged frog (*Rana draytonii*), western pond turtle (*Emys marmorata*), two-striped garter snake (*Thamnophis hammondi*), and yellow warbler (*Dendroica petechia*). The land is currently undesignated Department-owned property located near a high density urban setting and used by the general public in an uncontrolled manner (e.g., illegal dumping, horseback riding, dogs off leash, destruction of signs and fencing, off-road vehicle use). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect sensitive species and their habitats.

- 3) Designate the Liberty Island Ecological Reserve, Solano County.

Liberty Island is a 5,209 acre inundated island at the southern end of the Yolo Bypass (Bypass) in the northern Sacramento–San Joaquin Delta. The portion of the island owned by the Department is 4,308 acres in Sola-

no County. The area lies approximately twelve miles south-southeast of the town of Dixon, ten miles north of Rio Vista. It is accessible via county roads that intersect State Route 113 in Solano County. The property is bound by Liberty Cut, Prospect Slough, Little Holland Tract, and the western levee of the Sacramento Deep Water Ship Channel (which is now the eastern Yolo Bypass levee) to the east. Shag Slough and the Western Bypass Levee bound Liberty Island on the west. The Yolo Bypass Wildlife Area, owned by the Department, lies to the north with agriculture and conservation properties lying directly between Liberty Island and Yolo Bypass Wildlife Area. The southern region of Liberty Island is predominately open water and stands at tidal and subtidal elevations. The area of the Island within Solano County is open to full tidal excursion.

The primary purpose for accepting transfer of the Liberty Island from the Trust for Public Lands was to protect the developing wetland for special status fish species. The U.S. Fish and Wildlife Service has classified lands including and near Liberty Island as "critical habitat" for the Central Valley fall-run chinook salmon (*Oncorhynchus tshawytscha*) and the Delta smelt (*Hypomesus transpacificus*). The National Oceanic and Atmospheric Administration has listed as threatened the Southern Distinct Population Segment of North American Green Sturgeon (*Acipenser medirostris*) and designated Yolo Bypass lands as critical habitat for the species.

Positioned at the downstream end of the Yolo Bypass, Liberty Island is within the statutorily defined flood easement protecting urban Sacramento. The Department recognizes the importance of flood control and acknowledges Liberty Island habitat management constraints may be impacted by flood flow accommodation. Flooding is an important ecosystem process that shapes habitat structure and benefits fish and wildlife. The Department anticipates managing Liberty Island in a manner that is consistent with both flood protection and wildlife needs.

Liberty Island currently supports significant existing wildlife and has outstanding potential for restoration, floodplain management, and endangered species recovery. Seven primary management concerns pertain to the Liberty Island Ecological Reserve (LIER):

- Endangered Species/Critical Habitats: To protect, restore, and enhance native habitats, aid the recovery of federally and state listed endangered and threatened species.
- Biodiversity: To protect, manage, and restore the riparian woodlands, tidally-influenced wetlands, tidal open water, and non-tidal open water habitats representative of the biological diversity of the Sacramento/San Joaquin River Delta.

- Connectivity: Provide habitat linkages and migration corridors for wildlife in the Yolo Bypass and Cache Slough Complex to adjacent habitats.
- Cooperative Management: To coordinate land management activities with Federal, State, and local governments and agencies, private conservation organizations and citizens in support of fish and wildlife resource protection at the LIER.
- Wildlife: To provide breeding, migration, and wintering habitat for migratory and resident birds; aquatic habitat for spawning, rearing and refugia for endangered or threatened native fish, such as longfin smelt (*Spirinchus thaleichthys*), delta smelt, Sacramento splittail (*Pogonichthys macrolepidotus*) and salmon; and, provide habitat for mammals such as otters, beaver, muskrat, and others.
- Public Use: To provide limited, safe, and high quality opportunities for compatible educational and recreational activities that foster public appreciation of the unique natural heritage of the Bay/Delta Ecoregion.
 - Hunting at such times and in specific areas as designated by the Department is proposed for this reserve in Section 630(d)(23).
- Flood Flow Conveyance: To facilitate flood flow conveyance and the transportation of additional flows through the LIER in a manner that benefits wildlife by managing on-site conveyance features through nonstructural improvements such as vegetation management.

The property is currently undesignated land owned by the Department, located near an urban area. It is used by the general public in an uncontrolled manner (e.g. illegal dumping, destruction of signs, unregulated hunting, overnight camping, unauthorized structures built on property). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect federal and state listed species and their habitats.

4) Designate the San Antonio Valley Ecological Reserve, Santa Clara County.

The primary management objective of the 2,899 acre proposed San Antonio Valley Ecological Reserve is protection of native habitat types, wildlife and plant species that are present on the property. The site has historically been used for hunting, and limited hunting as part of special opportunities at such times and in specif-

ic areas as designated by the Department is proposed in Section 630(d)(36).

The native habitat types on the proposed reserve include Valley Oak Woodland, Blue Oak–Foothill Pine Woodland, Mixed Chaparral, and Vernal Pool. The property contains a high abundance and diversity of native flowering plants including five sensitive species. Hospital Canyon larkspur (*Delphinium californicum* subsp. *interius*) and chaparral hairbell (*Campanula exigua*) have not been proposed for state or federal listing as threatened or endangered, but are considered very rare and vulnerable by the California Native Plant Society (CNPS List 1B.2). Santa Clara thorn-mint (*Acanthomintha lanceolata*), spring lessingia (*Lessingia tenuis*), Michael’s rein orchid (*Piperia michaelii*) are California Native Plant Society List 4 plants, which are of limited distribution or infrequent throughout a broader area in California. Special status wildlife species possibly occurring on-site include California tiger salamander (*Ambystoma tigrinum californiense*), red-legged frog (*Rana aurora*) and foothill yellow legged frogs (*Rana boylei*). Tule elk (*Cervus elaphus*), which were re-introduced into their historical habitat in the 1970s, have been observed on the property.

Cattle grazing and other unauthorized uses have occurred on the property. The property is adjacent to Henry Coe State Park and private ranches. The property’s designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will provide the level of protection appropriate for the sensitive habitats and species known or anticipated to be on-site.

5) Designate the Sands Meadow Ecological Reserve, Tuolumne County.

The primary management objective for the proposed 120 acre Sands Meadow Ecological Reserve (SMER) is the protection of montane meadow, stream and forest habitats in the central Sierra Nevada. Management objectives would be to survey and manage for special status species including great gray owl (*Strix nebulosa*) and willow flycatcher (*Empidonax traillii*), both of which are State-listed as Endangered, known from this general area and utilize the type of habitats available on-site. Other focus species include a suite of mesocarnivores (animals that are mostly carnivorous) including Sierra Nevada red fox (*Vulpes vulpes necator*, State-listed as Threatened), wolverine (*Gulo gulo*, State-listed as Threatened), fisher (*Martes pennanti*) and marten (*Martes americana*). Management of this property as an ecological reserve would also facilitate protection of an adjacent 40 acre property with a conservation easement held by the Department. The 40 acre

parcel is bordered on three sides by the SMER. The two properties combined are surrounded by the Stanislaus National Forest and are wholly contained within a designated State Game Refuge. The designation of the Department’s parcel as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This designation will provide the level of protection appropriate for the sensitive habitats on-site and the listed species they support.

6) Designate the Vernalis Ecological Reserve, San Joaquin County.

The proposed Vernalis Ecological Reserve (VER) is approximately 136 acres of seasonal emergent wetland and riparian habitat, located along the San Joaquin River, south of Manteca in San Joaquin County. It consists of two separate units, Vernalis and Dredger Island, located on opposite sides of the mouth of a deep oxbow. The Vernalis unit is 115 acres in size and consists primarily of seasonal emergent wetland vegetation, along with a few small scattered cottonwoods. The Dredger Island unit is 21 acres in size and is a remnant stand of riparian habitat dominated by large cottonwoods and valley oaks (*Quercus lobata*), with some willows, elderberry (*Sambucus mexicana*), and other native shrubs in the understory. Both parcels are within the floodplain of the San Joaquin River. Because the habitat value to native species on this property is high and the potential for recreational use is relatively low due to its small size and lack of land-based public access, the Department proposes that this property should be designated as an ecological reserve.

The primary management objective for the proposed VER is to conserve the property’s seasonal wetland and riparian habitat and provide limited public recreational opportunities in the form of fishing and hunting. Other than permitted access across private farms that border both properties, the only access is by boat from the San Joaquin River, or by walking one to two miles along a levee from a public road. Most anglers access the properties by boat.

Recreational use of the properties is low, but illegal activities such as off-highway vehicle (OHV) use, trash dumping, target shooting, and campfires are fairly common. Department law enforcement personnel regularly patrol the property and eject individuals engaged in these activities. Designation of the property as an ecological reserve under proposed Section 630(b), Title 14 will provide the level of protection appropriate for the site and allow for more effective law enforcement.

The Vernalis unit was acquired in 1990 by the Department in fee title at no cost from the Federal Farmers Home Loan Administration, under the Federal Agricul-

tural Credit Act of 1987 that donated surplus farm land with significant wildlife values to state wildlife agencies. The transaction also included a conservation easement retained by the U.S. Fish and Wildlife Service (USFWS) that requires that the property be perpetually managed for the maintenance of wildlife habitat, the conservation of soil and water, and maintenance of the natural plant species and ecology of the area. The conservation easement also allows for public use and recreation consistent with the dominant uses for fish and wildlife, and the conservation of the natural environment of the area. Fishing and hunting are compatible uses of this property, but the only feasible hunting opportunities occur during the pheasant season when birds fly to the property, over the levee from adjacent alfalfa fields. The Stockton Sportsmen's Club leases the alfalfa fields every fall to conduct public pay-for-access hunts with pen-raised pheasants. Upland game hunting at such times and in specific areas as designated by the Department is proposed for this unit in Section 630(d)(41).

The Vernalis unit may benefit from some habitat improvement activities, but a plan describing the existing vegetation and proposed actions to benefit and/or increase native vegetation would need to be developed by the Department, and likely approved by the USFWS. Currently, no management plan exists for the Vernalis unit, but it is anticipated to be completed (along with updating the current plan for the Dredger Island unit) by the end of 2011.

The Dredger Island unit is owned by the Central Valley Flood Protection Board (Board) (formerly known as the State Reclamation Board) and managed by the Department under a 50-year lease acquired in 1977. The lease expires on April 1, 2027, but staff at the Board stated that it is common for these leases to be renewed for another 50-year term. The lease was obtained by the Department to preserve the property's wildlife habitat value and provide public recreational use. The Department has on file a signed photocopy of the lease, including a legal description of the boundaries as required under Title 14 for ecological reserve designations (confirmed by Department HQ Lands Staff.)

The Board reserves the right to use Dredger Island "for the purpose of maintaining, constructing and operating flood control works," and "may suspend . . . this agreement for any period or periods of time for levee reclamation or flood control purposes . . ." However, to date, the riparian habitat on the property appears to be quite healthy and intact, therefore, it appears that few, if any, impacts from flood control maintenance have actually occurred. The Board will need to approve the designation of the property as an Ecological Reserve by amending the lease, and that action will be completed prior to the scheduled adoption date for these proposed regulations. The Department's wildlife management

biologist for San Joaquin County (North Central Region) is currently working with the Board's Staff Environmental Scientist to amend the lease. This process includes updating the current Department management plan for Dredger Island, written in 1990.

The primary management objective for the Dredger Island unit is to conserve the property's riparian wildlife habitat and to provide public recreational opportunity in the form of fishing. At only 21 acres, the parcel is too small to sustain an upland game (primarily quail, dove, or rabbits) hunting program. The property is also approximately one mile north of a San Joaquin County school, so safety issues further preclude use of the property for hunting.

Dredger Island is remnant San Joaquin River riparian habitat that occurs within an area known to be used by nesting Swainson's hawks (*Buteo swainsoni*). Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) may also exist on the property, along with small populations of birds and small mammals that are typical of Central Valley riparian habitat. Neighboring properties along the east side of the parcel are large farms that grow alfalfa and row crops.

The designation of these lands as units of the Vernalis Ecological Reserve in the proposed Section 630(b), Title 14 will provide protection for the property through the general regulations proposed under Section 550 and other pertinent regulations in Section 630. Protection under Title 14 will help to prevent damaging activities and better protect the habitats, while still allowing continued use by the public for fishing and hunting on the respective units.

Site Specific Regulations for Palo Verde Ecological Reserve and the Magnesia Springs Ecological Reserve, Riverside County

Palo Verde Ecological Reserve

Hunting rabbit, doves and quail and waterfowl in accordance with general hunting regulations is currently allowed at the Palo Verde Ecological Reserve (current Section 630(b)(87)(B)). The Reserve is adjacent to a Riverside County park that allows overnight and long-term camping. Many people who stay at the park regularly visit the ecological reserve. The Department proposes to limit methods of take for hunting on the reserve for the safety of adjacent park users. The proposed regulations (Section 630(d)(28)), state that hunting with a firearm on the ecological reserve will be limited to hunting rabbits, doves, quail and waterfowl with a shotgun. Archery deer hunting is also proposed as an allowable use.

Magnesia Springs Ecological Reserve

Trails that cross the Magnesia Springs Ecological Reserve were rerouted and renamed as part of implementation of Section 7.3.3.2 of the Coachella Valley

Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan. This section addresses public use and trails management on reserve lands within the Santa Rosa and San Jacinto Mountains Conservation Area, which includes Magnesia Springs Ecological Reserve. These changes necessitate updating the names of trails currently referred to by name in Section 630(b)(73). The new names appear in the corresponding sections in the proposed regulations: Sections 630(g)(7) and 630(h)(16).

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Veteran's Memorial Building, 112 West Cabrillo Boulevard, Santa Barbara, California, on Thursday, November 17, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held at the State of California, Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 2, 2012 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before January 26, 2012, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on January 31, 2012. All comments must be received no later than February 2, 2012, at the hearing in Sacramento, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Chief, Wildlife Branch, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are intended to clarify existing regulations.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: Per proposed regulation Section 550.5(d), persons or organizations that apply for a special use permit would pay a nonrefundable application fee of \$58.71. If the applicant is notified that the Department intends to approve the permit, the applicant would pay a permit fee prior to the permit being issued. The proposed permit fee is \$51.00 for a Type 1 Special Use Permit or \$386.50 for a Type 2 Special Use Permit. The permit fee recovers the Department's cost to

review and issue the permit. An additional amount of money may be charged or a deposit may be required to recover other Department costs associated with a special use (e.g. site preparation, monitoring during the special use, clean up) Definitions of Type 1 and 2 special uses are in proposed Section 550.5(d)(1).

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The reduction of duplication within the lands regulations would reduce the number of pages in the regulation booklets which are published each year ("Hunting and Other Public Uses on State and Federal Areas"). This would save the state money in publishing costs. The state would recover the cost of regulating special uses or events on Department lands through the special use permit fee.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 15. DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

NOTICE OF EMERGENCY REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabi-

litation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Section 3000, 3043, 3075.2, 3097, 3195, 3320, and 3323 and adopt Sections 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, and 3078.6 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Alternative Custody Program.

PUBLIC HEARING

Date and Time: December 13, 2011 — 9:00 a.m. to 10:00 a.m.

Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street—North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close December 13, 2011 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**D. Hawkins
Regulation and Policy Management Branch
Telephone (916) 445-2314**

Questions regarding the substance of the proposed regulatory action should be directed to:

J. Brown or C. Flores
Department of Corrections and Rehabilitation
(916) 327-8351/(916) 324-6688

conomic impact on small business because they are not affected by the internal management of state prisons.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500-17630.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency:
- *Estimated General Fund savings of \$5,998,559 in FY 2011/2012; and estimated General Fund savings of \$6,122,362 in FY 2012/2013. See Attachment A, Economic Fiscal Impact Statement, Alternative Custody Program.*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse eco-

Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

This action provides the following:

- Amends section 3000 of the California Code of Regulations (CCR), Title 15, Division 3 by providing the definitions for Alternative Custody Program and Alternative Custody Program Participant, and providing revisions to definitions for Case Conference and Face-to-Face Contact.
- Amends sections 3000, 3043, 3075.2, 3097, 3195, 3320, and 3323 of the California Code of Regulations (CCR), Title 15, Division 3 concerning Alternative Custody Program.
- Adopts into the CCR, under Chapter 1, new Article 6.8, Alternative Custody Program. Under Article 6.8, establishes new sections 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, and 3078.6 concerning Alternative Custody Program.
- Brings the Department into compliance with the provisions of PC section 1170.05 by adopting provisions that establish a process for Alternative Custody Program. The Alternative Custody Program is designed to be a cost-saving measure for the State by allowing eligible inmates to be

released into the community by participating in a voluntary alternative custody program in lieu of confinement in state prison, which ultimately saves on the costs of incarceration.

- Defines “Residential Home,” “Transitional Care Facility,” and “Residential Drug or Treatment Program” as described in statute.
- Establishes the criteria by which inmates may be eligible for consideration to participate in the Alternative Custody Program, the processes by which inmates are placed on alternative custody, and the circumstances in which inmates may be removed from Alternative Custody Program.
- Establishes the “eligibility” and “exclusionary” criteria by which inmates may or may not be able to participate in the Alternative Custody Program.
- Incorporates six forms, by reference, into the regulations. A copy of each of the following forms has been made available for public review:
 - CDC 128-B (Rev. 4/74), General Chrono
 - CDCR 1502 (Rev. 10/06), Activity Report
 - CDC-128-G (10/89), Classification Chrono
 - CDC 115 (07/88), Rules Violation Report
 - CDC 115-A (7/88), Serious Rules Violation Report
 - CDC 115-C (5/95), Rules Violation Report —Part C
- Establishes, for use on a statewide basis, three new Department forms which are incorporated by reference into the regulations. A copy of each of the following forms has been made available for public review:
 - CDCR 2234 (06/11), ACP Application and Voluntary Agreement
 - CDCR 2235 (06/11), Alternative Custody Program Screening Form
 - CDCR 1516-ACP (06/11), Requirements of the Alternative Custody Program

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on November 28, 2011, or must be received by the CBOT at the hearing.

The CBOT does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be

held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 p.m. on November 14, 2011.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by sections 2570.13 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.2, 2570.3 2570.4, 2570.5, 2570.6, and 2570.13, the Board is proposing changes to Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code (BPC) section 2570.20, authorizes the Board to adopt rules in accordance with the Administrative Procedure Act relating to the professional conduct of occupational therapy practitioners to carry out its regulatory purpose. Existing law sets forth the supervision requirements for occupational therapy aides and assistants. The proposed regulations are designed to define and clarify the roles and responsibilities of occupational therapists, occupational therapy assistants, and occupational therapy aides, delivering professional services.

The following regulatory changes are proposed:

- Amend CCR section 4180. Definitions (pertaining to Supervision of Occupational Therapy Assistants, Limited Permit Holders, Students, and Aides).

The proposed amendment adds a new definition for "Clinical Supervision" by incorporating by reference the American Occupational Therapy Association's "Standards of Practice for Occupational Therapy".

- Amend CCR section 4187. Delegation of Tasks to Aides

The proposed amendment deletes subsection (d) that states "All documented client related services shall be reviewed and cosigned by the supervising occupational therapist." The proposed amendment is intended to delete any reference or authority that an aide is authorized to document

client records under any circumstance. The proposed regulation eliminates conflict with newly enacted statutory language contained in Business and Professions Code section 2570.2(a) which states in pertinent part "The occupational therapist or occupational therapy assistant is responsible for documenting the client's record regarding the patient related tasks that are performed by the aide."

- Add CCR section 4187. Supervision Plan for Occupational Therapist

The proposed regulation would add a new subsection that would require a documented plan be established for the clinical supervision of an occupational therapist(s) who is employed in facilities or businesses that are owned by an occupational therapy assistant or have an occupational therapy assistant functioning in an administrative, management, or directive role over the clinical services provided by the business or facility. It is the intent of the Board to allow occupational therapy assistants to function in administrative, management, and lead positions. However, the Board seeks to make it clear that an occupational therapy assistant functioning in these roles is not in any way authorized to practice beyond his or her scope of practice as an occupational therapy assistant. Furthermore, it is not proper for an assistant functioning as an administrator, manager, or other directive role, to evaluate the clinical performance of an occupational therapist.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact: The amendment to proposed section 4187 may have a cost impact to businesses or facilities that provide occupational therapy services that are owned by or whose services are administered or managed by an occupational therapy assistant. In cases where a business or facility only has one occupational therapist on staff, the regulations would require that another occupational therapist be hired or contracted to evaluate the clinical performance of the occupational therapist employed by the business or facility. The Board does not have data that indicates how many oc-

cupational therapy assistants own or operate their own practice. The Board does not have data regarding the number of facilities that employ an occupational therapy assistant in a supervisory, management, or clinical director capacity who oversees the delivery of occupational therapy services provided by the occupational therapists. This regulation is not thought to have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses from other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board has determined that there may be a cost impact to occupational therapy practices that are owned by or operated by an occupational therapy assistant. In such cases the owner operator would be required to hire or contract with another occupational therapist to evaluate the clinical services of the therapist who conducts the business's assessments and develops the treatment plans. In cases where a facility employs multiple occupational therapists that are managed or supervised by an occupational therapy assistant, the business would be required to designate one of the occupational therapists as the clinical evaluator. It is anticipated that the cost impact would be minimal.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that there would be fiscal impact to an occupational therapy assistant that owns and operates his/her own private practice. Please refer to the Business Impact statement above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice. Adoption of the proposed regulatory action is consistent with the Board's mandate to coordinate, administer, and regulate the practice of occupational therapy.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Jeff Hanson
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

OR

Heather Martin
CA Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations** > **Proposed Regulations**.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in

the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on November 28, 2011.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at: Embassy Suites San Francisco Airport — Waterfront, 150 Anza Blvd., Burlingame, CA 94010 at 1:30 p.m. on January 31, 2012.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 4005 of the Business and Professions Code and section 11420.20 of the Government Code and to implement, interpret, and make specific sections 315, 315.2, 315.4, 4300 and 4301 of the Business and Professions Code, and sections 11420.20 and 11425.50(e) of the Government Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California State Board of Pharmacy (Board) protects consumers by licensing and regulating all aspects of the practice of pharmacy in California, including the pharmacist, the pharmacy, and prescription drugs and devices. The Board also regulates drug wholesalers, veterinary food–animal drug retailers (VFADR), designated representatives (manager responsible for ensuring compliance of wholesaler or VFADR), and other practitioners such as pharmacist interns and technicians. The Board licenses thousands of individuals and firms, and administers and enforces 12 regulatory programs. The Board fulfills its public protection mandate by imposing discipline on licensees who violate the Pharmacy Law.

Business and Professions Code section 4005 generally authorizes the board to adopt and amend rules and regulations pertaining to the practice of pharmacy.

Business and Professions Code section 4300 authorizes the board to discipline a licensee as well as refuse to issue a license to an applicant.

Business and Professions Code section 4301 authorizes the board to take action against a licensee for unprofessional conduct as defined.

Business and Professions Code section 315 established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (Department) and required the SACC to formulate uniform and specific standards for use by healing arts boards in dealing with substance abusing licensees.

Business and Professions Code Section 315.2 specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

Business and Professions Code Section 315.4 authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.

Government Code section 11420.20 authorizes the board to adopt regulations to govern an adjudicative proceeding.

Government Code section 11425.50(e) prohibits a penalty from being based upon a guideline unless the guideline has been adopted as a regulation.

Title 16, California Code of Regulations Section 1760 currently incorporates by reference the Board's Disciplinary Guidelines. Board staff, Deputy Attorneys General, Administrative Law Judges, licensees, and attorneys use these guidelines to assist in determining penalties in the disciplinary case against board licensees. The Board is proposing to amend Section 1760 of Division 17 of Title 16 of the California Code of Regulations. The purpose for amending the regulation is to update the Disciplinary Guidelines that are incorporated by reference in section 1760, and revised in September 2011. The board is proposing to update the Disciplinary Guidelines to conform with changes to the Pharmacy Law (Business and Professions Code sections 4000 et seq.), to clarify some existing terms and conditions of probation that appear ambiguous, establish new terms and conditions necessary to ensure rehabilitation of licensees and remove terms no longer utilized or necessary in the interest of public protection.

Further, in April 2011, the SACC finalized a document named *Uniform Standards Regarding Substance–Abusing Healing Arts Licensees*, which contained the sixteen uniform standards as required by Section 315. The Board is proposing to use the SACC's standards,

where applicable, throughout its guidelines as a way to facilitate implementation of the uniform standards.

Provided below is information on the general changes proposed for the Board's Disciplinary Guidelines.

1. Proposed changes resulting from reorganization of the Guidelines:

- Consolidation of all the lists of standard terms and conditions of probation into one list for all individual license types (Pharmacist, Intern Pharmacist, Pharmacy Technician and Designated Representative).
- Removal of all legal citations under each separate category of violations. These can be made available via an attachment for those who want such a reference.
- Revised definitions for the various categories of violations and inclusion of sample violations within each category of violation.

2. Proposed changes to Disciplinary Orders and Terms of Probation for Individual Licensees:

New Model Disciplinary Order Language for a:

- License Reinstatement Order with Conditions Prior to Issuing License
- General License Reinstatement

Changes to Model Language for the following types of Disciplinary Orders:

- Revocation
- Suspension
- Issuance of Probationary License
- Surrender

New term of probation

- Suspension

Changes to the following existing terms of probation:

- Cooperate with Board Staff: This term would be revised to clarify what activities require cooperation within the term as well as specify that such cooperation must occur timely.
- Restrictions on Supervision and Oversight of Licensed Facilities: This term would be renamed to better reflect the requirements of the term and to specify that it is appropriate only for pharmacists and designated representative licensees. Further, this term would provide for the consolidation of other existing terms — No Supervision of Ancillary Personnel and Consultant for Owner or Pharmacist-in-Charge. This term would also be changed to facilitate consolidation of the individual license types.

- Reimbursement of Board Costs: This term would be renumbered. Also, a new option would be created that would allow a respondent to submit payments to the board pursuant to an approved plan, and would specify that payment in full must be completed at least one year prior to the end of probation. Further, the proposed change would remove the language stating that the filing of bankruptcy does not relieve the respondent of the requirement to pay the board.
- Certification Prior to Resuming Work (Pharmacy Technician Only): For purposes of consolidation, this term would be moved to a new consolidated section. Further, the term would reflect that it is appropriate only for pharmacy technician licensees.
- Notification of Departure: For purposes of consolidation, this term would be moved to apply to all individual licensees, not just pharmacy technicians and designated representatives as currently authorized.
- License Practice Requirements — Tolling: This term would be renamed to better reflect the provisions contained therein. Proposed changes are necessary to facilitate consolidation of the individual license types. Additionally, the optional language would be changed to allow the board greater flexibility in meeting the employment needs of a respondent while balancing the board's probation monitoring needs to ensure that necessary rehabilitation occurs. A new option would also be created specific for intern pharmacists to reflect the experiential requirements of pharmacy education.
- Restricted Practice: This term would be renumbered for purposes of consolidation and language would be added to authorize a designee to perform board functions. In addition, this term would be revised to include a requirement for submission of written proof of compliance. It would also add an option to include requirements for "satisfactory proof" of compliance to the Board that may include written acknowledgment of compliance with the restriction on practice from a licensee's direct supervisor, pharmacist in charge, and owner or owner representative.
- Pharmacist Exam (Pharmacists Only): This term would be renumbered and a notation that this term shall be used only for pharmacists would be provided with this change. The phrase "he or she" would be replaced with [he/she] to allow the drafter to select the gender of the respondent. The suspension language contained within this term

would also be modified to clarify the prohibited functions during any such suspension. Further, if the respondent is required to complete 16 semester units of remedial education, the board would clarify with this change that proof of completion of such coursework must be provided.

- **Psychotherapy:** This term would be renumbered and updated to clarify the conditions when inclusion of this term is appropriate. The suspension language would be modified to clarify those activities that are prohibited during any such suspension.
- **Medical Evaluation:** This term would be renumbered and modified to facilitate consolidation of each of the individual license types. The suspension language would be modified to clarify those activities that are prohibited during any such suspension. The same types of changes are being made to the two options provided in this term.
- **Pharmacists Recovery Program (Pharmacists and Pharmacist Interns Only):** The term would be updated to clarify the conditions when inclusion of this term is appropriate. This term would also be modified to clarify what actions a respondent must take to comply with the term as well as the timeline for completion. The term would also clarify that the respondent must comply with the treatment contracts established by the PRP and that failure to comply will result in the automatic suspension of practice by the respondent. The suspension language would be modified to clarify those activities that are prohibited during any such suspension. The option language would be modified to clarify the intent of the option, which is to allow the PRP the ability to monitor a respondent under specified conditions prior to the respondent successfully completing the PRP.
- **Abstain from Drugs and Alcohol:** This term would be renumbered and portions rewritten to clarify exceptions to the prohibition.
- **Prescription Coordination and Monitoring of Prescription Use:** This term would be updated to clarify the conditions when inclusion of this term is appropriate. This term would also be modified to allow for consolidation of each of the individual license types and to clarify that the board may identify a designee to perform board functions. The suspension language would also be changed to clarify those activities that are prohibited during any such suspension.

- **Community Service Program:** This term is being renumbered and modified to facilitate consolidation of each of the individual license types. In addition, the term would specify that proof of completion must be provided and clarifies that the board may allow a designee to perform board functions.
- **Supervised Practice:** This term would be renumbered and a notation would be added to indicate this term only applies to pharmacists, pharmacist interns and designated representatives. This term would be recast to better describe the requirements of the term and to provide better guidance to the respondent on the board's expectations. This term would define what constitutes a violation of probation and the suspension language would be changed to clarify those activities that are prohibited during any such suspension.
- **Surrender of DEA Permit (Pharmacists and Pharmacist Interns Only):** This term would be renumbered and a notation would be added to clarify that this term should only be used for pharmacists and pharmacist interns. This term would be modified to replace the phrase "his or her" with [his/her] to allow for the respondent's gender to be accurately reflected in the decision. In addition, this term would clarify what acts are prohibited under this term and the two optional terms are being numbered.
- **Ethics Course:** This term would be renumbered and a notation would be made to clarify that this term should only be used for pharmacists and pharmacist interns. In addition, this term would be modified to accurately reflect the course requirements as detailed in Title 16, California Code of Regulations Section 1773.5 and specify that proof of enrollment and completion must be provided to the board. The term would also specify that failure to provide such proof will be considered a violation of probation.

Proposed changes to the terms and conditions of probation of the Guidelines to use the Uniform Standards for Substance Abusing Licensees as set forth by the SACC in its April 2011 document:

- Amend "Notice to Employers" and rename as "Reporting of Employment and Notice to Employers" term
- Add "Clinical Diagnostic Evaluation" and delete "Mental Health Examination" term

- Amend “Random Drug Screening” and rename as “Drug and Alcohol Testing” term
- Add “Facilitated Group Recovery and/or Support Meetings” term
- Add “Work Site Monitor” term
- Add “Attend Substance Abuse Recovery Relapse Prevention and Support Groups” term

3. Proposed changes to Premises Licensees:

Changes to the Model Disciplinary Orders Language for the following types of discipline:

- Revocation
- Suspension
- Issuance of a Probationary License
- Surrender
- Public Reprimand

Add new terms of probation

- Definition: Respondent
- Sale or Discontinuance of Business: This term would specify that the board, in its sole discretion, will determine if it retains jurisdiction over a licensed location that has either changed location or ownership (full or partial) irrespective if a new license number is issued. If the board makes such a determination, the jurisdiction would be carried over to the new location or license number and the terms and conditions of probation would carry over for the remainder of the probation period. The substance of this proposed change is currently contained in a different term (License Surrender While on Probation).
- Premises Open for Business: This term would require a business to remain open for a specified period of time. The language allows flexibility to the board in determining the minimum number of hours per calendar month the business must be open and sets forth the reporting requirements for this term.
- Suspension: This term would be added as separate, optional term of probation.

Proposed changes to existing terms of probation

- Cooperate with Board Staff: This term would be renumbered and modified to clarify what activities are required in cooperation with the board.
- Reimbursement of Board Costs: This term would be renumbered and would be modified to remove the word “owner” as a definition of respondent is being added in a separate term to provide clarity. Also, a new option would be created that will allow a respondent to submit payments to the board pursuant to an approved plan, and would specify that payment in full must be completed at least one year prior to the end of probation.

- Status of License: This term would be renumbered and would be modified to remove the word “owner” as a definition of respondent is being added in a separate term to provide clarity. Further a provision that currently specifies that the board would retain jurisdiction would be removed.
- Posted Notice of Probation: This term would be renumbered and would be modified to remove the word “owner” as a definition of respondent is being added in a separate term to provide clarity. In addition, this term would provide for the timeframe for compliance with the posting requirements.
- Report of Controlled Substances: This term would be modified to allow the board greater flexibility in determining the frequency of reports and number that should be submitted. This term would also clarify that the board allows the use of a designee to complete functions on its behalf. In addition this term would be renumbered and would be modified to remove the word “owner” as a definition of respondent is being added in a separate term to provide clarity.
- Posted Notice of Suspension: This term would be renumbered and the word “owner” would be removed. In addition, the board would specify the timeframe for posting the notice to provide the respondent with clear direction on the board’s expectation for compliance with this term. This term would additionally specify that failure to comply with this requirement will be considered a violation of probation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states as it only affects licensees that have been disciplined by the board.

Impact on Jobs/New Businesses: The board has made an initial determination that the proposed regulatory action would have no significant impact on the creation of jobs or new businesses or the elimination of jobs or ex-

isting businesses or the expansion of business in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur unless that individual is licensed by the board and subject to disciplinary action. Further, an individual subject to random drug screening as a term and condition of probation could incur an additional \$78 to \$88 per urine screen, if the frequency of tests was increased to the specified requirements. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small business as it will only affect businesses licensed by the board that are subject to disciplinary action.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

Any interested person may present written statements relevant to the above determinations to the Board of Pharmacy at the above-mentioned address or may present statements orally at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons may be ob-

tained upon request from the Board of Pharmacy at 1625 N. Market Blvd. N219, Sacramento, California 95834, or from the Board of Pharmacy Web site (www.pharmacy.ca.gov).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Anne Sodergren
Address: 1625 N. Market Blvd. N219
Sacramento, CA 95834
Telephone No.: (916) 574-7910
Fax No.: (916) 574-8618
E-Mail Address: anne.sodergren@dca.ca.gov

The backup contact person is:

Name: Carolyn Klein
Address: 1625 N. Market Blvd. N219
Sacramento, CA 95834
Telephone No.: (916) 574-7913
Fax No.: (916) 574-8618
E-Mail Address: carolyn.klein@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.pharmacy.ca.gov.

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING

Repair Assistance Co-Payment Modification

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau" or "BAR") is proposing to take the action described in the Informative Digest. Any per-

son interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

CENTRAL CALIFORNIA

Monday, November 28, 2011 at 11:00 a.m.
BAR Field Office
4152 West Swift Ave., Suite 104
Fresno, CA 93722

SOUTHERN CALIFORNIA

Tuesday, November 29, 2011 at 11:00 a.m.
BAR Field Office
16735 Von Karman Ave., Suite 100
Irvine, CA 92606

NORTHERN CALIFORNIA

Wednesday, November 30, 2011 at 11:00 a.m.
Contractors State Licensing Board
9821 Business Park Drive
Sacramento, CA 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on Wednesday, November 30, 2011**, or must be received by the Bureau at one of the above referenced hearings. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.3, 44001.5, 44002, 44005, 44010.5, 44011, 44012, 44014.2, 44014.7, 44015, 44017, 44037.1, 44062.1, 44091, 44092, 44093, 44094, 44095, 44125, and 44126 of the

Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1, Division 33, Title 16, California Code of Regulations and Article 10 of Chapter 1, Division 33, Title 16, California Code of Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

INTRODUCTION:

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs (DCA), is the state agency charged with administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources by identifying for repair or retirement vehicles that exceed specific emissions standards. A consumer who chooses to keep a vehicle that has failed its inspection must have it repaired in order to complete the vehicle registration renewal process.

In order to help consumers comply with the provisions of the Program, BAR is charged with administering Consumer Assistance Program (CAP). Through CAP, a consumer can retire a qualified vehicle at any time and for any reason for either \$1,000 or \$1,500 if they meet income eligibility requirements. If a consumer who meets CAP's income requirements chooses to repair a vehicle after it fails a biennial Smog Check inspection, they can receive up to \$500 toward emissions-related repairs.

BACKGROUND:

Health and Safety Code (H&S) section 44062.1(e) requires BAR to establish a co-payment for consumers participating in the Repair Assistance (RA) option of the CAP. Since 2000, the co-payment for low-income consumers has been set at \$20.

Existing law requires BAR to have two protocols for testing vehicles in the state depending on a particular region's ability to meet air quality standards. In areas of the state with better air quality, vehicles are subject to a Two Speed Idle (TSI) test. In non-attainment areas of the state, vehicles are subject to a more rigorous Acceleration Simulation Mode (ASM) test. When a vehicle fails a biennial Smog Check inspection, CAP policy allows Gold Shield stations to charge BAR a maximum of 1.8 labor hours for a TSI and 2.3 labor hours for an ASM test and diagnosis of emissions-related failures for CAP-approved vehicles.

Testing and Diagnosis

BAR has determined that the policy of allowing stations to be reimbursed for testing and diagnosis of CAP vehicles through fixed labor hours does not currently reflect industry practice. BAR conducted a survey of Gold Shield stations in July 2010 to determine the cost

of what a station might charge a consumer for testing and diagnostic services. The survey found that Gold Shield stations charge non-CAP consumers less than CAP consumers for testing and diagnostic service. Despite this additional cost, a study by BAR concluded that the emissions-related repairs performed by Gold Shield stations results in only slightly greater emissions reductions than those performed by regular Test-and-Repair stations for comparable CAP and non-CAP vehicles.

The disparity between what BAR pays for CAP vehicles and non-CAP repairs necessitates a change to the consumer co-payment. BAR proposes to modify the current \$20 consumer co-payment to the cost of testing and diagnosing the emissions-related failure. This change would allow BAR to better utilize the CAP budget as resources would be spent on actual repairs, while consumers could individually negotiate a better price for diagnosing and testing their vehicle.

Crediting of Consumer Co-payment

Currently, consumers may request a credit toward the \$20 co-payment for any expenses incurred for emissions-related repairs performed by a station prior to qualifying for CAP. BAR proposes to discontinue the optional crediting of emissions-related repairs since the consumer will be responsible for bearing the full cost of the testing and diagnosis, which will now constitute the statutorily mandated co-payment. This proposed change effectively eliminates the need for this option.

Income-Eligible Consumers

This proposed regulation also allows consumers to self-certify their income in order to qualify for CAP. To ensure appropriate controls, BAR will periodically and randomly require a consumer to provide income verification documents prior to receiving approval to participate in CAP. If BAR determines that a consumer has submitted false information, they will not be allowed to participate in CAP in the future.

Income Eligibility Table

The income eligibility table included on the CAP application will be revised to reflect the maximum gross household income amounts based on the recently revised 2011 Federal Poverty Level published by the U.S. Department of Health and Human Services (DHHS) (*Federal Register* Vol. 76, No.13, Thursday, January 20, 2011, pp. 3637-3638). Pursuant to section 3394.4(a)(3)(A), income eligibility for CAP is based on the most current Federal Poverty Level. The income eligibility table is included in the CAP application to assist applicants in determining their eligibility. As mandated by statute, BAR is required to update its regulations, specifically the CAP application income-eligibility

table, to correspond with the most current Federal Poverty Level.

EFFECT OF REGULATORY ACTION:

The Bureau of Automotive Repair (BAR) is proposing the following amendments to existing regulations:

- I. Modify the RA consumer co-payment. This update will remove the current \$20 co-payment and instead will require the consumer co-payment to be the total cost of testing and diagnosing the Smog Check failure. (§ 3394.4)
- II. Remove the optional crediting of emissions-related repairs toward the consumer co-payment. (§ 3394.6)
- III. Amend the CAP application to reflect the consumer co-payment modification and updates to the Federal Poverty Level as mandated by statute. (§§ 3394.6 and 3394.7)
- IV. Modify eligibility requirements to require consumers to self-certify their income and to provide verification of income upon request of the Bureau. (§ 3394.6)

The proposed action will make the following changes to existing regulation:

1. Amend Section 3394.3 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. Remove from subparagraph (b) “diagnostic and” and “Once the station has initiated any diagnostic or repair work on the vehicle, the owner’s eligibility status or associated co-payment as specified in section 3394.4 shall not change.”
2. Amend Section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. Remove from subparagraph (B) of subsection (a)(3) “Spend a minimum co-payment of twenty dollars (\$20) on emissions-related repairs at a licensed smog check test-and-repair station” and remove “Money spent to correct tampered emissions control systems or to make a vehicle testable shall not be included in the co-payment.” Add “The consumer shall pay the total cost of testing and diagnosing the emissions-related failure as a co-payment for receiving Repair Assistance.”

This edit modifies the co-payment requirement. Currently, a consumer is responsible for making a \$20 co-payment before receiving the \$500 CAP repair benefit. Under this modification, the consumer will be responsible for all testing and diagnosis fees in lieu of the \$20 co-payment. This

modification will address the large proportion of the \$500 CAP benefit consumed on testing and diagnosing a vehicle by Gold Shield stations based on existing CAP policy. This change will also help to encourage consumers to comparison shop and possibly negotiate a better price from the station for the testing and diagnosis of their vehicle. It will also help to encourage stations to compete on price for business from CAP consumers. The budget savings resulting from this change would help BAR meet projected demand for CAP, which will exceed estimated revenues.

3. Amend Section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. In subsection (a), replace the current CAP application form (11/10) with form (08/11).
- b. In subsection (b) remove “The application must,” “include,” and “copies.” Add “To qualify based on income level, the applicant must certify under penalty of perjury that he or she has a household income that is less than or equal to two hundred twenty-five percent (225%) of the federal poverty level, as published quarterly in the Federal Register by the United States Department of Health and Human Services.” Add “The bureau may require the applicant to,” “provide a copy,” and “one of.”
- c. In subsection (b)(1) remove “Under the Repair Assistance option, copies of any invoices for emissions-related repairs performed prior to applying to the Consumer Assistance Program, for the sole purpose of crediting the consumer co-payment required under section 3394.4.”

This modification deletes a reference that permits a CAP consumer to request BAR to credit toward the \$20 co-payment any emissions-related work performed on the vehicle prior to its acceptance into CAP. Since the consumer is no longer subject to a \$20 co-payment in order to receive the \$500 CAP benefit and will now be responsible for paying all testing and diagnostics fees, there is no longer a need for this section.

- d. In subsection (b)(2) remove “If applying based on income level, an applicant must provide any one of the following documents:” This change renumbers (b)(2)(A) to (b)(1).

e. Make other minor grammatical, editorial, and numerical changes.

f. Add subsection (c) which states, “A consumer who submits false information or fails to provide verification of income, as requested by the bureau, cannot receive future assistance under the Consumer Assistance Program.”

4. Amend Section 3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Remove “08_022 CAP/APP (11/10), which is hereby incorporated by reference” and add “as prescribed in section 3394.6.”

Incorporation by Reference

The incorporation by reference in sections 3394.6 and 3394.7 of the CAP application form (08_022 CAP/APP (08/11)) is appropriate since publishing this document in the California Code of Regulations would be cumbersome, unduly expensive, impractical and unnecessary. This revision reflects the correct version of the application that includes the modified consumer co-payment. The revised application will be incorporated by reference, replacing the version dated 11/10. If anyone should wish to examine the revised application, it is always available upon request from BAR. The revised application will also be available for review throughout this rulemaking process and will be available on BAR’s Web site at www.smogcheck.ca.gov.

FISCAL IMPACT ESTIMATES

**FISCAL IMPACT ON PUBLIC AGENCIES
INCLUDING COSTS OR SAVINGS TO STATE
AGENCIES AND COSTS/SAVINGS IN FEDERAL
FUNDING TO THE STATE**

No cost or savings to state agencies and in federal funding to the state.

This proposed regulatory action is cost neutral. Any savings generated by BAR requiring consumers participating in RA to contribute the testing and diagnosis as the co-payment would be fully expended on repairing additional vehicles because demand for the program is greater than the appropriation authority.

**NONDISCRETIONARY COSTS/SAVINGS
TO LOCAL AGENCIES**

None.

LOCAL MANDATE

None.

**COSTS TO ANY LOCAL AGENCY OR
SCHOOL DISTRICT FOR WHICH
GOVERNMENT CODE SECTIONS 17500-17630
REQUIRES REIMBURSEMENT**

None.

BUSINESS IMPACT

BAR has made an initial determination that the proposed regulatory action would have no significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Since BAR will no longer pay for the testing and diagnosis of emissions-related failures, Gold Shield stations may lose approximately \$3,048,101 in testing and diagnostic revenue annually. This change is warranted because Gold Shield stations currently charge CAP consumers what is authorized by BAR policy rather than what the marketplace dictates. This often means that a larger percentage of CAP repairs are consumed by testing and diagnostic fees compared to non-CAP consumers. The proposed regulation addresses this disparity and results in Gold Shield stations charging CAP consumers market price for these services.

IMPACT ON JOBS/NEW BUSINESSES

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

**COST IMPACT ON REPRESENTATIVE PRIVATE
PERSON OR BUSINESS**

In FY 2009-10 the average state contribution for CAP repairs was \$413. Based on current appropriation BAR can assist approximately 28,535 consumers on an annual basis. It is estimated that 16,265 (57 percent) repairs cost less than \$500; these consumers would be required to contribute higher testing and diagnostic fees. The remaining 12,270 consumers are projected to have repairs exceeding \$500 and would benefit from a reduction in overall costs. Of the 12,270 consumers, 11,104 would participate based on their vehicle failing an ASM test and another 1,166 from a failed TSI test. All consumers participating in RA would realize savings of \$20 each due to the elimination of the mandatory co-payment. Changes to RA policy allow BAR to assist an additional 7,959 consumers repair their vehicle at an average repair cost of \$413.

Overall, individuals would realize annual savings of \$3,672,227 or \$36.72 million over the lifetime of this regulation.

EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

BAR has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

**AVAILABILITY AND LOCATION OF
THE RULEMAKING FILE AND THE
FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Steven Hall
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2135
Fax No.: (916) 255-1369
E-mail: steven.hall@dca.ca.gov

The backup contact person is:

Tonya Blood
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4758
Fax No.: (916) 255-1369
E-mail: tonya.blood@dca.ca.gov

WEB SITE ACCESS

Materials regarding this proposal can also be found on the BAR's Web site at www.smogcheck.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (DHCS) PROPOSES TO NO LONGER REIMBURSE PROVIDERS FOR PROVIDER-PREVENTABLE CONDITIONS THAT DID NOT EXIST PRIOR TO THE INITIATION OF TREATMENT FOR THAT PATIENT BY THAT PROVIDER

This notice provides information of public interest with respect to the enacted mandates in the federal Affordable Care Act (ACA) Section 2702. The State proposes to no longer reimburse providers for provider-preventable conditions (PPC), as defined in Title 42 of the Code of Federal Regulations, Chapter IV, Parts 434, 438, and 447, Subpart A for PPCs that did not exist prior to the initiation of treatment for that patient by that pro-

vider. As required by the ACA, the State proposes to enforce this change effective July 1, 2012, pending federal approval from CMS.

NONPAYMENT FOR PROVIDER-PREVENTABLE CONDITIONS

The proposed amendment in California's Medicaid State Plan would authorize Medi-Cal to not reimburse providers for provider-preventable conditions (PPC), as defined in Title 42 of the Code of Federal Regulations, Chapter IV, Parts 434, 438 and 447. PPCs are health care-acquired conditions in any inpatient hospital condition as well as other provider-preventable conditions in any health care setting. Medi-Cal will not reduce payment for a PPC when the provider noted that the PPC condition existed prior to the initiation of treatment for that patient by that provider. Reduction in payment shall be limited to PPCs that would otherwise result in an increase in payment, and to the extent that the State can reasonably isolate for nonpayment the portion of the payment directly related to treatment for, and related to, the PPC. If the Medicare crossover claim has a PPC diagnosis that was not present prior to the initiation of treatment for the patient by that provider, DHCS will exclude the diagnosis from the payment calculation.

PUBLIC REVIEW AND COMMENT

The federal statutes and regulations discussed above are available for public review at local county welfare offices throughout the State. Written comments (or requests for copies of the statutes and regulations and/or copies of the written comments) may be submitted to: Janice Spitzer, Chief, Benefits Analysis Section; Medi-Cal Benefits and Waiver Analysis Division; Department of Health Care Services; MS 4600; P.O. Box 997417; Sacramento, CA 95899-7417.

DEPARTMENT OF REAL ESTATE

RE-NOTICE and RESETTING OF ANNUAL FEE REVIEW BY THE REAL ESTATE COMMISSIONER

Barbara J. Bigby, Acting Real Estate Commissioner, proposes to consider whether the fees charged by the Department should be lower than the maximum amount allowed pursuant to California Business and Professions Code (hereinafter the "Code") Sections 10209.5, 10210, 10214.5, 10215, 10250.3 and 11011. The Acting Commissioner's consideration will include all comments, objections and recommendations regarding such fees.

DETERMINATION OF FEE AMOUNTS

Sections 10226 and 11011 of the Code require, among other things, that the Commissioner hold at least one regulation hearing each calendar year to determine if fees lower than those authorized under Section 10226.5(b) of the Code should be prescribed. The hearing referred to below shall serve as the regulation hearing for the purpose of satisfying the requirement of Sections 10226(a) and 11011(a) of the Code. The Department of Real Estate may present, at this hearing, relevant data compiled by the Department, and other sources, if appropriate, that have been used or which the Commissioner may use in making the determination if fees should be lower. The Acting Commissioner does not propose to adopt, amend and/or repeal any sections of the California Code of Regulations (CCR) at this time. However, she wishes to consider all comments, objections and recommendations regarding such fees.

PUBLIC HEARING

The Acting Commissioner or her representative will hold a public hearing starting at 10:00 a.m., on December 6, 2011, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. (The hearing originally scheduled for October 24, 2011, at the same location, is continued to this date in order to eliminate a scheduling conflict.) The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Acting Commissioner.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action to the Commissioner. The written comment period closes on December 6, 2011 (an extension of the original deadline of October 24, 2011). All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

Daniel E. Kehew, Real Estate Counsel
Department of Real Estate
2201 Broadway
Sacramento, CA 95818
Telephone: (916) 227-0425

Backup contact person for this proposed action is Mary Clarke at (916) 227-0780.

AUTHORITY AND REFERENCE

Business and Professions Code Sections 10209.5, 10210, 10214.5, 10215, 10250.3 and 11011.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

No regulations are proposed to be adopted, amended or repealed.

EFFECT ON SMALL BUSINESS

There are no proposed regulatory actions to affect small business.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

There are no proposed regulatory actions requiring disclosures.

CONSIDERATION OF ALTERNATIVES

There are no proposed regulatory actions requiring consideration of alternatives.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Daniel E. Kehew, Real Estate Counsel
Department of Real Estate
2201 Broadway
P.O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0425

**AVAILABILITY OF STATEMENT OF
REASONS, TEXT OF PROPOSED
REGULATIONS AND INTERNET SITE**

There is no Statement of Reasons or text of proposed regulations.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

There is no changed or modified text.

**COMPLIANCE WITH GOVERNMENT CODE
SECTION 11346.4(a)(1) THROUGH (4)**

The Department of Real Estate will mail or deliver a copy of this Notice of Proposed Action by the Real Es-

tate Commissioner to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be affected by any fee adjustment. The Department has no way of knowing which licensees are small businesses.
4. The California Association of Realtors (a real estate licensee trade organization) and the California Building Industry Association (a home builders trade organization).
5. A substantial number of land developers. Not small businesses by definition, they may, nevertheless, be affected by any fee adjustment.

DECISION NOT TO PROCEED

DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

File No. REG-2011-00002

September 28, 2011

NOTICE OF DECISION NOT TO PROCEED WITH SUITABILITY IN ANNUITY TRANSACTIONS REGULATIONS

NOTICE IS HEARBY GIVEN that pursuant to California Government Code section 11347 Insurance Commissioner Dave Jones (hereinafter "Commissioner") has decided not to proceed with the proposed regulatory action to adopt Article 1.4 of Subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations, entitled "Suitability in Annuity Transactions". The Commissioner retains the right to proceed with a similar regulatory action regarding this topic in the future, should he deem it advisable to do so.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2011-0822-01
BOARD OF BARBERING AND COSMETOLOGY
Disciplinary Guidelines

This action amends existing provisions governing disciplinary action by the Board of Barbering and Cosmetology under the Administrative Procedure Act (Government Code section 11400 et seq.) by adopting and incorporating by reference revised disciplinary guidelines entitled "Disciplinary Guidelines, October 2010".

Title 16
California Code of Regulations
AMEND: 972
Filed 10/04/2011
Effective 11/03/2011
Agency Contact:
Kevin Flanagan (916) 575-7104

File# 2011-0826-02
BOARD OF FORESTRY AND FIRE PROTECTION
Aspen, Meadow, and Wet Area Restoration, 2011

This regulatory action creates a new silvicultural "special prescription" that provides requirements for projects that harvest, remove or otherwise treat commercial conifer trees in aspen stands, meadows or wet areas for purposes of restoring habitat, ecological and range values. This will allow for a wider range of project designs.

Title 14
California Code of Regulations
AMEND: 913.4, 933.4, 953.4, 959.15 REPEAL:
939.15
Filed 10/05/2011
Effective 01/01/2012
Agency Contact: George Gentry (916) 653-8031

File# 2011-0818-02

CALIFORNIA GAMBLING CONTROL COMMISSION

Revised Schedule of Investigation Costs; Misc. Div. 18 Clean-up

This non-substantive regulatory action by the California Gambling Control Commission (CGCC) amends 34 sections of title 4 of the California Code of Regulations. The amendments are being made in response to the Bureau of Gambling Control's recently adopted regulations, which increased the amount of the deposit required to begin various applicant background investigations. CGCC is now amending its regulations and related forms to reflect the new deposit amount. Clarifying grammatical and organizational changes are also being made at this time.

Title 4

California Code of Regulations

AMEND: 12100, 12101, 12200.3, 12200.5, 12200.6, 12200.9, 12200.10B, 12200.14, 12202, 12205.1, 12218, 12218.7, 12218.8, 12220.3, 12220.5, 12220.6, 12220.14, 12222, 12225.1, 12233, 12235, 12238, 12300, 12301.1, 12309, 12350, 12354, 12358, 12359, 12362, 12400, 12404, 12463, 12464

Filed 09/30/2011

Effective 09/30/2011

Agency Contact: James Allen (916) 263-4024

File# 2011-0906-01

CALIFORNIA HORSE RACING BOARD

Vesting of Title to Claimed Horse

Section 1658 of title 4 of the California Code of Regulations formerly provided that title to a horse which has been claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate. The California Horse Racing Board amended section 1658 to add a new subdivision (b) which provides that the stewards shall void the claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled.

Title 4

California Code of Regulations

AMEND: 1658

Filed 10/04/2011

Effective 11/03/2011

Agency Contact: Harold Coburn (916) 263-6397

File# 2011-0816-03

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Equipment Only Bond Financing Program

This action is the Certificate of Compliance filing making permanent the emergency adoption of the Equipment Only Bond Financing Program.

Title 4

California Code of Regulations

ADOPT: 8035.5

Filed 09/28/2011

Effective 09/28/2011

Agency Contact: Alejandro Ruiz (916) 653-2749

File# 2011-0817-07

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Campus Law Enforcement Course

This regulatory action increases the hours of the legislative mandated Campus Law Enforcement Course from 32 hours to 40 hours to allow for more instruction in various topical areas and renames the "Written Examination" area to "Learning Activities and Group Exercises" to enhance instruction and address local needs. Pursuant to the Commission, these amendments will become effective 1/1/2012 (Gov. Code, sec. 11343.4(b)).

Title 11

California Code of Regulations

AMEND: 1081

Filed 09/28/2011

Effective 01/01/2012

Agency Contact: Cheryl Smith (916) 227-0544

File# 2011-0817-06

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Field Training Officer Update Course Minimum Requirements

This regulatory action adds "Driver Safety" to the list of topics that must be included in a Field Training Officer Update Course curriculum in the incorporated by reference Commission Procedure D-13.

Title 11

California Code of Regulations

AMEND: 1005

Filed 09/28/2011

Effective 01/01/2012

Agency Contact: Cheryl Smith (916) 227-0544

File# 2011-0819-03

DEPARTMENT OF FOOD AND AGRICULTURE

Melon Fruit Fly Interior Quarantine

This regulatory action will remove approximately 91 square miles surrounding the Bakersfield area of Kern County from the regulation as the area under quarantine for the melon fruit fly, *Bactrocera cucurbitae*. The effect of the change is to remove authority for the State to reg-

ulate movement of hosts of melon fruit fly from, into and within this area as the quarantine is no longer necessary. As a result of the treatments and negative trapping for the fly, melon fruit fly was determined to be eradicated from Kern County on June 2, 2011.

Title 3
California Code of Regulations
AMEND: 3425(b)
Filed 09/28/2011
Effective 10/28/2011
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2011-0819-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This regulatory action adds approximately one square mile of the Ryer Island area of Sacramento County to the currently designated quarantine areas for the light brown apple moth "LBAM" ("Epiphyas postvittana"). The effect of the amendment will increase authority for the state to perform quarantine activities against the LBAM in this area. The amendment results in a total of approximately 5,364 square miles under regulation within the state.

Title 3
California Code of Regulations
AMEND: 3434(b)(8)
Filed 09/29/2011
Effective 10/29/2011
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2011-0823-01
DEPARTMENT OF PUBLIC HEALTH
Standard Admission Agreement

This rulemaking action amends sections 72516 and 73518 of Title 22 of the California Code of Regulations to conform these regulations, and the incorporated-by-reference Standard Admission Agreement for skilled and intermediate long-term care facilities, to the orders of the Superior Court in *Parkside Special Care Center, Inc., et al. v. Sandra Shewry, Director of the California Department of Health Services, et al., County of San Diego*, Case Number GIC 860574 (2006-2008). More specifically, this rulemaking action adds provisions which specify the process for a care facility to request direction from the California Department of Public Health that would enable the facility to alter the Standard Admission Agreement. The rulemaking also amends the incorporated-by-reference Standard Admission Agreement to, among other things, conform to

legal requirements regarding disclosure of medical information, return of security deposits, posting of recent licensing agency inspections, and facility notice to residents prior to room changes.

Title 22
California Code of Regulations
AMEND: 72516, 73518
Filed 09/29/2011
Effective 09/29/2011
Agency Contact: Sandra Ortega (916) 445-9403

File# 2011-0915-04
DEPARTMENT OF REHABILITATION
Vocational Rehabilitation

In this regulatory action, the Department of Rehabilitation (Department) adopts and amends regulations pertaining to the subject of "Vocational Rehabilitation." The Department adopts a new regulation entitled "Supported Employment Program; Closing the Record of Services With an Employment Outcome" and adopts several related regulations defining terms used in the vocational rehabilitation regulations. The Department also amends regulations entitled "Ineligibility Determination," "Closing the Record of Services With a Determination of Ineligibility," and "Mandatory Annual Reviews After the Record of Services Has Been Closed."

Title 9
California Code of Regulations
ADOPT: 7016.1, 7019.6, 7025.7, 7028.7, 7179.7
AMEND: 7098, 7179.1, 7181.1
Filed 10/04/2011
Effective 11/03/2011
Agency Contact: Shelly Risbry (916) 445-4466

File# 2011-0825-01
DEPARTMENT OF SOCIAL SERVICES
SB 1214 Crisis Nurseries

The California Department of Social Services is amending regulations concerning Crisis Nurseries to reflect recent changes in legislation. The California Legislature has amended the definition of "Voluntary placement" to exclude placement of children by social service workers. In addition, the legislation extended the sunset date for Crisis Nurseries to January, 2014.

Title 22/MPP
California Code of Regulations
AMEND: 86500, 86501
Filed 09/29/2011
Effective 10/29/2011
Agency Contact:
Zaid Dominguez (916) 651-8267

File# 2011-0927-02
FISH AND GAME COMMISSION
Abalone

This emergency regulatory action prohibits the take of abalone along the coast of Sonoma County.

Title 14
California Code of Regulations
AMEND: 29.15
Filed 10/04/2011
Effective 10/04/2011
Agency Contact:
Sherrie Fonbuena (916) 654-9866

This is the adoption of a regulation that specifies the details required in a bill presented to the Board for payment of legal services rendered on behalf of an applicant for victim compensation and related pertinent information.

Title 2
California Code of Regulations
ADOPT: 649.21
Filed 10/05/2011
Effective 11/04/2011
Agency Contact:
Geoff Feusahrens (916) 491-3863

File# 2011-0819-04
PHYSICAL THERAPY BOARD OF CALIFORNIA
Documentary Evidence of Equivalent Degree

The Physical Therapy Board of California submitted this action to amend title 16, California Code of Regulations, section 1398.26.1. The amendments change the specific evaluation tools that approved credential evaluation services are required to use to evaluate the education of foreign educated physical therapists and physical therapist assistants applying for licensure.

Title 16
California Code of Regulations
AMEND: 1398.26.1
Filed 09/29/2011
Effective 10/29/2011
Agency Contact: Rebecca Marco (916) 561-8260

File# 2011-0817-05
SAN FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION
San Francisco Bay Plan

This action amends San Francisco Bay Plan map 5 to change the boundary of the waterfront priority use area at Candlestick Point to match the boundary of the Candlestick Point State Recreation Area, this upon request of the Department of Parks and Recreation and the Redevelopment Agency of the City and County of San Francisco.

Title 14
California Code of Regulations
AMEND: 11900
Filed 09/28/2011
Effective 09/28/2011
Agency Contact: Linda Scourtis (415) 557-8789

File# 2011-0824-01
VICTIM COMPENSATION AND GOVERNMENT
CLAIMS BOARD
Rule 649.21 Verification of Attorney's Fees regulation

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN May 11, 2011 TO October 5, 2011

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

10/05/11	ADOPT: 649.21	
09/27/11	ADOPT: 599.506(f)	AMEND: 599.502(f)
09/21/11	AMEND: 1859.90.2	
09/08/11	AMEND: 1859.2, 1859.82	
09/07/11	ADOPT: 10000, 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066	
09/06/11	AMEND: 29000	
09/01/11	ADOPT: 58600 REPEAL: 58600	
09/01/11	AMEND: 54200	
09/01/11	AMEND: 54600	
08/08/11	ADOPT: 59700	
07/27/11	AMEND: 1859.90.2, 1859.81	

07/15/11 AMEND: 1151, 1153, 1155.500, 1165,
1170, 1172.20
07/11/11 ADOPT: 21903.5 AMEND: 21903
07/11/11 ADOPT: 570.5 AMEND: 571(b)
07/06/11 AMEND: 1859.2, 1859.81, 1859.148.2,
1859.166.2
07/06/11 AMEND: 18360
07/05/11 AMEND: 649.3, 649.18, 649.20, 649.24
06/30/11 AMEND: 633.9
06/21/11 REPEAL: 59152
06/07/11 AMEND: 640
05/12/11 AMEND: 1859.83

Title 3

09/29/11 AMEND: 3434(b)(8)
09/28/11 AMEND: 3425(b)
09/19/11 AMEND: 3423(b)
09/15/11 AMEND: 3591.2(a)
09/07/11 AMEND: 3591.2(a)
08/23/11 ADOPT: 6131 AMEND: 6128, 6130
08/23/11 ADOPT: 1392.4.1 AMEND: 1392,
1392.1, 1392.2, 1392.4, 1392.6,
1392.8.1, 1392.9, 1392.11
08/03/11 AMEND: 3437(b)
07/28/11 REPEAL: 1400.9.1
07/15/11 AMEND: 3434(b)
07/15/11 AMEND: 3589
07/15/11 REPEAL: 3286
07/08/11 AMEND: 3658
07/05/11 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
3701.4, 3701.5, 3701.6, 3701.7, 3701.8
AMEND: 3407
06/28/11 AMEND: 3591.15(a)
06/27/11 AMEND: 3437(b)
06/22/11 AMEND: 3435(b)
06/15/11 AMEND: 3437(b)
05/31/11 AMEND: 3437(b)
05/11/11 ADOPT: 6446, 6446.1 AMEND: 6400,
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10/04/11 AMEND: 1658
09/30/11 AMEND: 12100, 12101, 12200.3,
12200.5, 12200.6, 12200.9, 12200.10B,
12200.14, 12202, 12205.1, 12218,
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12220.6, 12220.14, 12222, 12225.1,
12233, 12235, 12238, 12300, 12301.1,
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12362, 12400, 12404, 12463, 12464
09/28/11 ADOPT: 8035.5
09/20/11 AMEND: 12590
09/07/11 ADOPT: 1500.1 AMEND: 1498
08/16/11 ADOPT: 8078.2 AMEND: 8070, 8072,
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08/10/11 ADOPT: 10030, 10031, 10032, 10033,
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07/27/11 AMEND: 5064
07/21/11 ADOPT: 1844.1
07/20/11 AMEND: 4800, 4801, 4802
07/20/11 AMEND: 150
07/12/11 AMEND: 1606, 1974, 1954.1, 1957,
1959, 1976, 1976.8, 1976.9, 1977, 1978,
1979, 1979.1
07/01/11 ADOPT: 5000, 5010, 5020, 5021, 5030,
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06/24/11 ADOPT: 10030, 10031, 10032, 10033,
10034, 10035, 10036
06/21/11 AMEND: 1876
06/15/11 ADOPT: 340 AMEND: 221, 222, 226,
230, 288, 300 REPEAL: 262
05/31/11 AMEND: 8078.2

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09/22/11 ADOPT: 80069.2 AMEND: 80070
09/19/11 ADOPT: 30001.5
09/19/11 ADOPT: 74112, 75020, 75030, 75040,
75050, 75150, 75200, 75210 AMEND:
74110
08/15/11 ADOPT: 19817.2, 19817.5, 19840,
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19816.1, 19817.1, 19846
08/15/11 ADOPT: 40050.2
08/15/11 ADOPT: 40050.3
08/15/11 AMEND: 40100.1

08/15/11	AMEND: 40404	1619.4, 1619.5
08/15/11	AMEND: 40405.1	AMEND: 1694, 2940.7, 6060
08/15/11	ADOPT: 40509	06/27/11 REPEAL: 10119, 10120
08/15/11	ADOPT: 40513	06/20/11 AMEND: 10250.1
08/15/11	ADOPT: 40514	06/02/11 AMEND: 5154(j)(1)
08/15/11	ADOPT: 40515	05/31/11 AMEND: 5155
08/15/11	ADOPT: 40516	05/20/11 AMEND: 341.13, 341.14, 341.16, 341.17
08/15/11	ADOPT: 41021	
08/15/11	ADOPT: 41022	
08/04/11	ADOPT: 1039.1	Title 9
08/04/11	AMEND: 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.6	10/04/11 ADOPT: 7016.1, 7019.6, 7025.7, 7028.7, 7179.7 AMEND: 7098, 7179.1, 7181.1
06/21/11	AMEND: 58771	08/08/11 ADOPT: 4500, 4510, 4520
06/20/11	ADOPT: 80048.9, 80048.9.4 AMEND: 80046.1, 80048.5, 80070.1, 80070.2, 80070.3, 80070.4, 80070.5, 80070.6 REPEAL: 80046, 80070.7, 80070.8	Title 10
05/23/11	ADOPT: 13075.3, 13075.6, 13075.7, 13075.8, 13075.9 AMEND: 13075.1, 13075.2, 13075.4 (renumbered from 13075.3), 13075.5 (renumbered from 13075.4)	09/26/11 ADOPT: 2785
		09/26/11 ADOPT: 2830
		09/26/11 ADOPT: 2725.5, 2960, 2961, 2962, 2963 AMEND: 2930
		09/22/11 AMEND: 2318.6, 2353.1
		09/22/11 AMEND: 2318.6, 2353.1, 2354
		08/11/11 AMEND: 2731
		08/01/11 AMEND: 3012.3
		07/27/11 AMEND: 2770.1, 2847.3
		07/25/11 AMEND: 2222.12
		07/13/11 AMEND: 210, 221
		07/08/11 AMEND: 2699.6707
		07/07/11 AMEND: 260.204.9
		06/30/11 AMEND: 2699.6700, 2699.6709, 2699.6721, 2699.6725
		05/31/11 REPEAL: 2274.74, 2274.77
		05/23/11 AMEND: 2698.99
		05/16/11 AMEND: 2498.6
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08/16/11	AMEND: 218	
Title 8		
09/19/11	AMEND: 15201, 15214, 15251, 15300, 15400.2, 15405, 15430.1, 15478, 15481, 15484	Title 11
09/06/11	AMEND: 8608	09/28/11 AMEND: 1081
08/29/11	AMEND: 1504, 3207	09/28/11 AMEND: 1005
08/10/11	ADOPT: 3302 AMEND: 3308	09/02/11 ADOPT: 101.2
08/05/11	ADOPT: 1603.1 AMEND: 1504, 1600, 1602, 1603	09/02/11 AMEND: 101.1
08/01/11	AMEND: 16423 REPEAL: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464	06/06/11 AMEND: 51.7
07/28/11	ADOPT: 6799.1 AMEND: 6755	06/01/11 AMEND: Article 20, section 51.2
07/07/11	ADOPT: 1610 (section heading), 1610.1, 1610.2, 1610.3, 1610.4, 1610.5, 1610.6, 1610.7, 1610.8, 1610.9, 1611 (section heading), 1611.1, 1611.2, 1611.3, 1611.4, 1611.5, 1612 (section heading), 1612.1, 1612.2, 1612.3, 1612.4, 1613 (section heading), 1613.1, 1613.2, 1613.3, 1613.4, 1613.5, 1613.6, 1613.7, 1613.8, 1613.9, 1613.10, 1614, 1615 (section heading), 1615.1, 1615.2, 1616 (section heading), 1616.1, 1616.2, 1616.3, 1616.4, 1616.5, 1616.6, 1616.7, 1617 (section heading), 1617.1, 1617.2, 1617.3, 1618 (section heading), 1618.1, 1618.2, 1618.3, 1618.4, 1619 (section heading), 1619.1, 1619.2, 1619.3,	05/31/11 AMEND: Article 20, section 51.25
		05/25/11 ADOPT: Article 20, section 51.27
		05/24/11 AMEND: Article 20, section 51.15
		05/24/11 AMEND: Article 20, section 51.24
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		09/15/11 AMEND: 2190
		08/23/11 ADOPT: 345.00 AMEND: 345.02, 345.04, 345.15, 345.18, 345.20, 345.22, 345.23, 345.26
		08/16/11 AMEND: 1800
		07/06/11 ADOPT: 1231.2 AMEND: 1200, 1201, 1217, 1221, 1222, 1232
		07/01/11 AMEND: 156.00, 156.01
		Title 13, 17
		06/20/11 AMEND: Title 13: 2299.5 and Title 17: 93118.5

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10/05/11 AMEND: 913.4, 933.4, 953.4, 959.15
REPEAL: 939.15
10/04/11 AMEND: 29.15
09/28/11 AMEND: 11900
09/22/11 AMEND: 565, 565.4, 566, 566.1, 569,
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09/22/11 AMEND: 7.50(b)(1.5), 27.65, 29.80
09/16/11 AMEND: 11900, 11970
09/08/11 AMEND: 300, 311
08/30/11 ADOPT: 3550.16
08/29/11 AMEND: 502
08/08/11 ADOPT: 1052.5 AMEND: 895, 916.9,
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08/03/11 ADOPT: 1051.3, 1051.4, 1051.5, 1051.6,
1051.7 AMEND: 895
07/22/11 AMEND: 852.60.2, 852.60.3, 852.60.4,
852.61.1, 852.61.2, 852.61.3, 852.61.5,
852.61.6, 852.61.7, 852.61.8, 852.61.9,
852.61.10, 852.61.11, 852.61.12,
852.62.1, 852.62.2, 852.62.3
07/14/11 AMEND: 791, 791.7, 792, 793, 794, 795,
796 REPEAL: 791.5
07/12/11 ADOPT: 749.6
07/08/11 ADOPT: 708.1, 708.2, 708.3, 708.4,
708.5, 708.6, 708.7, 708.8, 708.9,
708.10, 708.11, 708.12, 708.13, 708.14,
708.15, 708.16, 708.17 AMEND: 360,
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06/21/11 AMEND: 7.50
06/16/11 AMEND: 7.00, 7.50
06/13/11 AMEND: 632
06/09/11 AMEND: 27.20, 27.25, 27.30, 27.32
(renumbered to 27.35), 27.35
(renumbered to 27.40), 27.45, 27.50,
27.65, 28.26, 28.27, 28.28, 28.29, 28.48,
28.49, 28.54, 28.55, 28.56, 28.58, 28.65,
52.10, 150.16 REPEAL: 27.40, 28.51,
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05/19/11 AMEND: 632
05/12/11 ADOPT: 28301
05/11/11 AMEND: 27.80

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09/27/11 ADOPT: 3078, 3078.1, 3078.2, 3078.3,
3078.4, 3078.5, 3078.6 AMEND: 3000,
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08/16/11 ADOPT: 3769, 3769.1, 3769.2, 3769.3,
3769.4, 3769.5, 3769.6
08/03/11 AMEND: 3000
07/28/11 ADOPT: 3084.8, 3084.9, 3086 AMEND:
3000, 3084, 3084.1, 3084.2, 3084.3,
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07/19/11 AMEND: 3090, 3176.4, 3315, 3323
07/07/11 ADOPT: 3076.4, 3076.5 AMEND: 3076,
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06/27/11 AMEND: 3140
06/20/11 ADOPT: 8007, 8008 AMEND: 8000
06/15/11 ADOPT: 3571, 3582, 3590, 3590.1,
3590.2, 3590.3 AMEND: 3000
06/15/11 ADOPT: 3571, 3582, 3590, 3590.1,
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06/14/11 AMEND: 3000, 3045.3, 3123, 3134,
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06/02/11 AMEND: 3378
05/26/11 ADOPT: 1747.1, 1749.1, 1750.1
AMEND: 1706, 1747, 1748, 1749, 1750,
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05/26/11 AMEND: 3025, 3291, 3296, 3300, 3301,
3383, 3397 REPEAL: 3302
05/13/11 REPEAL: 1
05/11/11 AMEND: 3335

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10/04/11 AMEND: 972
09/29/11 AMEND: 1398.26.1
09/27/11 ADOPT: 3394.40, 3394.41, 3394.42,
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09/22/11 AMEND: 1202, 1203, 1204, 1205, 1208,
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09/22/11 AMEND: 109, 121
09/19/11 AMEND: 1715, 1735.2, 1751, 1784
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09/07/11 ADOPT: 319.1
09/01/11 AMEND: 1793.5
08/31/11 AMEND: 2411, 2414
08/24/11 AMEND: 1399.157, 1399.160.3,
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08/18/11 ADOPT: 1315.50, 1315.53, 1315.55
08/18/11 AMEND: 995
08/17/11 AMEND: 974
08/03/11 AMEND: 999
08/01/11 AMEND: 1327
07/21/11 AMEND: 1005
07/20/11 ADOPT: 4145 AMEND: 4141
07/12/11 ADOPT: 1399.547
07/01/11 AMEND: 2070, 2071
06/14/11 AMEND: 1398.44, 1399, 1399.85
06/06/11 AMEND: 4144 now 4147

05/24/11 ADOPT: 1810.1, 1810.2, 1816.8, 1820, 1820.5, 1821, 1822 AMEND: 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1832, 1833.1, 1833.2, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, 1888

05/18/11 AMEND: 124

05/18/11 AMEND: 1536

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09/27/11 AMEND: 2505

09/23/11 AMEND: 6540

09/21/11 AMEND: 56034

09/19/11 AMEND: 54342, 57332

09/08/11 AMEND: 60201

08/29/11 ADOPT: 58883, 58884, 58886, 58887, 58888 AMEND: 50604, 54355, 58543

06/30/11 AMEND: 2500, 2502, 2505

06/30/11 AMEND: 6020, 6035, 6051, 6065, 6070, 6075

06/17/11 ADOPT: 95356

06/16/11 ADOPT: 95600, 95601, 95602, 95603, 95604, 95605, 95606, 95607, 95608, 95609, 95610, 95611, 95612

06/08/11 ADOPT: 30108.1, 30226 AMEND: 30108, 30115, 30125, 30145, 30190, 30191, 30192, 30192.1, 30192.2, 30192.3, 30192.4, 30192.5, 30192.6, 30225, 30257 REPEAL: 30236

05/19/11 AMEND: 93115.3, 93115.4, 93115.6, 93115.7, 93115.8, 93115.9, 93115.10, 93115.13

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09/26/11 AMEND: 19591

09/26/11 AMEND: 1533.2, 1598

09/22/11 ADOPT: 25128.5

08/16/11 ADOPT: 1685.5

07/20/11 AMEND: 25106.5-11

07/08/11 ADOPT: 2558.1

06/22/11 AMEND: 1507

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06/30/11 AMEND: 1160.10

06/21/11 AMEND: 200, 201, 202, 204, 208, 209, 212

05/12/11 ADOPT: 2991, 2992, 2993, 2993.1, 2994, 2994.1, 2995, 2995.1, 2996, 2996.1, 2997, 2998, 2999

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09/29/11 AMEND: 72516, 73518

09/22/11 ADOPT: 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, 64420.7 AMEND: 64418, 64418.1, 64418.2, 64418.7

09/16/11 ADOPT: 2706-8 AMEND: 2706-1, 2706-2

09/13/11 AMEND: 50605

08/23/11 AMEND: 97212, 97213, 97228, 97229, 97232, 97240, 97241, 97246, 97248

07/21/11 AMEND: 50035.5, 50145, 50179.5, 50183, 53845 REPEAL: 50245

07/19/11 ADOPT: 64430

06/29/11 AMEND: 51008.5

06/23/11 ADOPT: 70058, 71054, 72094, 73092, 74650, 76138, 76831.1, 78094.1, 79063, 79570 AMEND: 70707, 70715, 71507, 71515, 72521, 72527, 73519, 73523, 74717, 74743, 76521, 76525, 76555, 76916, 76918, 78437, 79313, 79799

05/17/11 ADOPT: 52100, 52101, 52102, 52103, 52104, 52500, 52501, 52506, 52508, 52509, 52510, 52511, 52512, 52513, 52514, 52515, 52600 AMEND: 52000, 52502, 52503, 52504, 52505, 52507, 52516

05/12/11 AMEND: 1256-9, 1256-10

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06/29/11 AMEND: 25805

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